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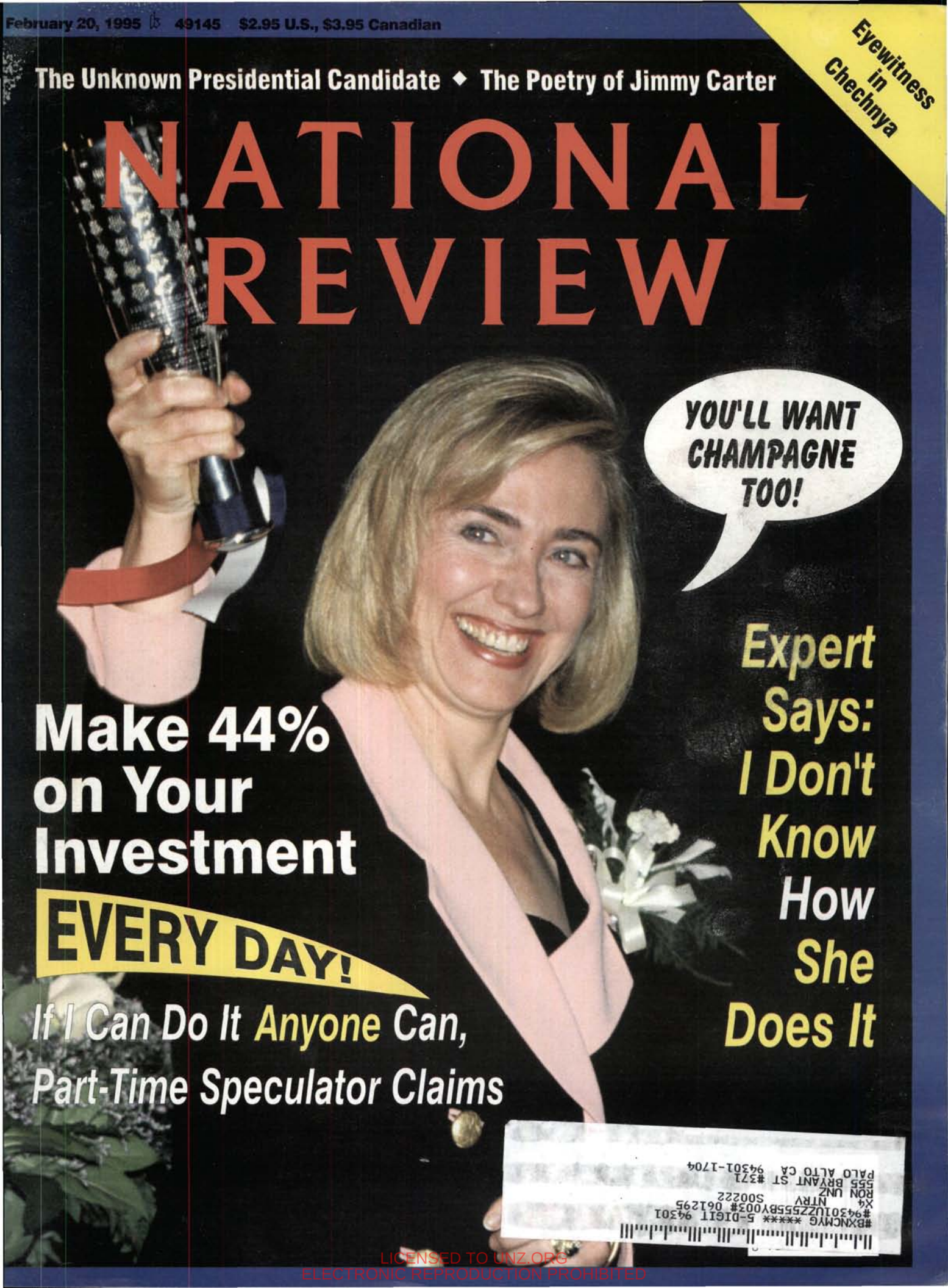

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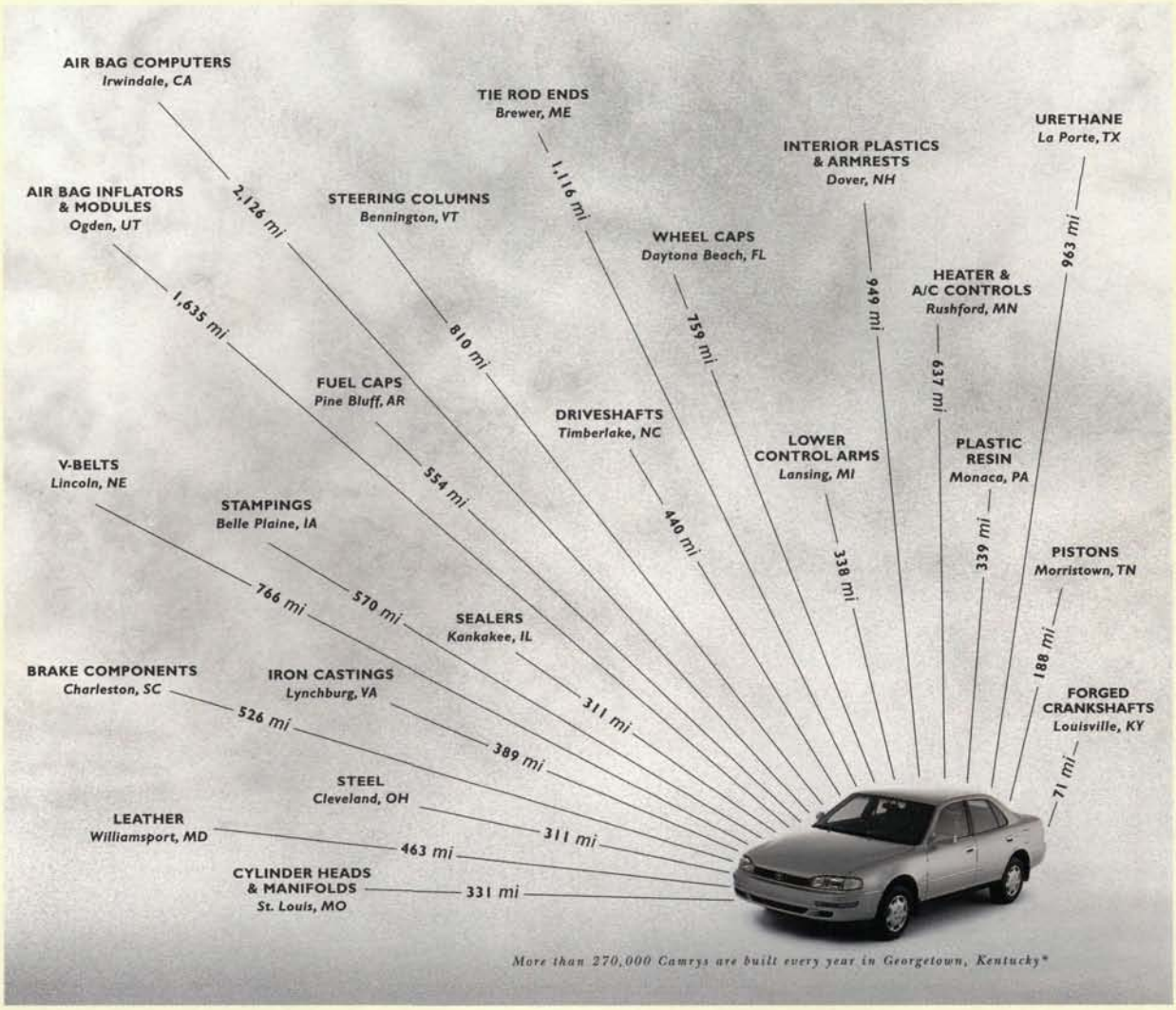

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NATIONAL REVIEW

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Letters

Patterns of Death

Eugene H. Methvin's "The Face of Evil" [Jan. 23] is a chilling account. I have always been skeptical of psychological findings, but Mr. Methvin's descriptions of the psychiatrists' predictive accuracy were compelling.

Speaking of mass murder, a brief review of twentieth-century history shows that millions of people have died at the hands of their own governments. It should be worth learning why governments kill. Why not have some of the psychiatrists at the NCAVC conduct interviews at the Bureau of Alcohol, Tobacco, and Firearms so conveniently at hand?

S. Loeffel
Hastings, Neb.

As a college student intent on pursuing a career in law enforcement, it was with great interest that I read Mr. Methvin's article. The piece is excellent, but Mr. Methvin errs in claiming that Charles Whitman, who killed 16 people shooting from the University of Texas Administration Building tower, was interviewed in prison in the late 1960s. Whitman's 90-minute shooting spree ended when he was shot to death by police. Incidentally, the timely assistance of a civilian "posse" armed with legally owned hunting rifles kept Whitman pinned down long enough to allow the officers to ambush him successfully.

Derald Mabbitt
Lubbock, Tex.

I erred in condensing my description of Dr. Frazier's study. Whitman was, of course, killed in his Texas Tower attack and thus was not among those killers interviewed in prison. He was included in the study because Dr. Frazier did a "psychiatric autopsy" based on Whitman's "diary" and on interviews with his friends, father, and other relatives. I regret the error. —EM

Fiendish Friends

Adrian Karatnycky exposes Russia's aggression well ["Grrr . . . ," Feb. 6] but the creepiest thing about our sitting in comfort as we watch Russia's slow, relentless annihilation of the Chechen people is the certain knowledge that this is exactly what they had in mind for us just a few short years ago. The second creepiest thing is the genuine shock and astonishment expressed by the Clinton Administration. They had always thought that the Russians were the good guys.

Winston Smith
Whittier, Calif.

Evolution of Truth

I thoroughly enjoyed M. Stanton Evans's "What Wall?" [Jan. 23] on the myth of strict separation between church and state, but I think Mr. Evans has missed something.

The liberals don't *care* what the Founding Fathers intended. Liberal Supreme Court Justices are very much like liberal theologians. They are operating under a world view that assumes there is no objective or concrete truth. Thus they believe that documents like the Bible and the Constitution must be continuously "reinterpreted" in order to be relevant to truth as we understand it today. This thinking allows the liberal to take a text and twist it to mean exactly the opposite of what its author originally intended. The First Amendment is a case in point.

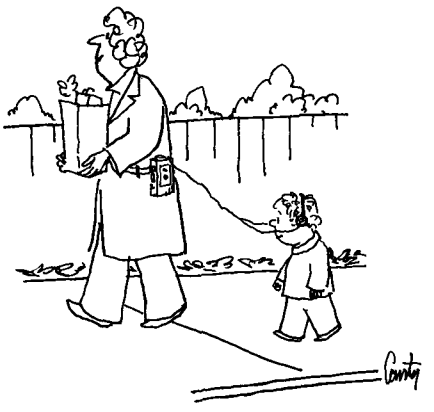
Sean M. Wooten
Indiana, Pa.

Dress Codes

You identify Taki ["Dressing Up, Looking Down," Jan. 23] as author of *Nothing to Declare*. Having read his little snit about wearing ties, I would suggest expanding his description to include *nothing to say*. I went to work after finishing college in 1956 and until recently was forced to choke myself with those stupid ties and dress in those silly suits for almost forty years. Thank God those days are ending! People have finally discovered that we can do business, especially on the phone, in comfortable clothes.

A pox on the shallow, poseur Takis of this world.

Paul A. Rubinstein
New York, N.Y.



Right on, Taki! This piece confirms my long-held suspicion that many of the rich and successful suffer from a deep-seated embarrassment for not qualifying as true Americans, as defined by the liberal press. Surely, unpressed slacks or sweat suits, well-trodden "running shoes" (not sneakers, God forbid), and unkempt hair will achieve just the right feeling of belonging.

Probably Taki even remembers when one "dressed" to take an airline flight. The last vestige of that novelty is even now disappearing with the ever smaller (on some carriers non-existent) first-class accommodations. The homogenization of America continues!

Arthur M. Horst
Reading, Pa.

Wonks for Progress

Andrew Ferguson ["Intrigue for Wonks," Jan. 23] doubts that Washington's new conservative establishment is serious about dismantling the federal leviathan because this would diminish our influence. He says he knows several Washington welfare experts, "good federalists all," and will wager that they "become a subtle lobby for keeping welfare a federal responsibility"—this way, we can continue to "spend our days with the brethren in seminars and conferences at the Willard or AEI, palavering on topics of our greatest ardor."

As it happens, AEI welfare experts Douglas Besharov, Charles Murray, and James Q. Wilson are emphatic proponents of the view that welfare programs should be thoroughly devolved to the states and localities. The argument for welfare federalism is powerfully argued in Mr. Murray's widely noted recent essay in *Commentary* and in Mr. Wilson's equally widely noted Wriston Lecture at the Manhattan Institute. The idea that any of them might favor

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nationalized welfare policy out of self-interest is absurd and unfunny.

I also think Mr. Ferguson's broader point is a little off. The formation in Washington of a large conservative intellectual establishment has been all to the good so far. It was, for example, a major reason for the upset defeat of President Clinton's health-care plan last year; the outcome would have been different, I believe, in the mid 1960s or late 1970s, when AEI was the only right-of-center game in town and Democratic Presidents could stage-manage sweeping legislative proposals (the Great Society, the energy Gosplan) through Democratic Congresses. If the Clinton plan had passed, this would have given us lots to palaver about at AEI pow-wows for years to come. The prospect never occurred to us, and there is a lesson in this.

Christopher C. DeMuth
President
American Enterprise Institute
Washington, D.C.

Equal Limits

Regarding your line about term limits ". . . when the poster boy for term limits is no longer Dan Rostenkowski, but Newt Gingrich, some temporizing may be in order" ["The Week," Dec. 31]: If there is a larger way to make an error, I'm not aware of it. The Republicans were elected to enact, among a myriad of other items, definitive term limits. Just because "our guy" is now in charge, we can't let that deter us from the mission for which "our guy" was elected. Are our memories so short that we have forgotten all the indignities of past Democratically-controlled Congresses? If the Democrats regain power in 1996, we can be certain that they will re-enable all of their "power perks." If the Republicans don't put some big-time, anti-lock braking systems on the House and Senate, then it will be time for a legitimate third party, or another armed revolt. Take your pick.

Don Farrar
Martinez, Calif.

Race Matters

I object to Ed Rubenstein's "Right Data" [Nov. 21] on the Boston Fed's study of mortgage lending. I am a co-author of the study, along with Alicia Munnell, James McEneaney, and Geoffrey Tootell. The *criticisms* of this study are "fatally flawed," not the study.

It is important to distinguish between the Boston Fed's findings and some of the policy prescriptions it may have inspired. The study itself simply pointed out a problem, namely that some mortgage applicants had been denied credit for non-economic reasons. Citing an unusually large loan value or low net worth may be an effective rhetorical technique, but it does not alter the basic findings—that economic factors explain much of the racial disparity in denial rates in Boston in 1990, but that after taking them into account, race still affected the mortgage decision.

Claims by David Horne of the FDIC that the data contain errors have received considerable attention, yet are gross exaggerations. For example, Mr. Horne calls counteroffers that are rejected by the applicant and which the study treats as denials a data error, ignoring the fact that regulatory agencies, including the FDIC, require them to be so classified. The few genuine errors found by Mr. Horne do not affect the finding that race had distorted the lending decision.

The argument that default rates disprove the Boston Fed's findings is completely bogus. First, no information exists on the default rates of white and minority mortgage borrowers in Boston. The data cited refer to foreclosure rates by neighborhood. Defaults are not the same as foreclosures, and minority home-owners do not all live in minority-dominated neighborhoods. Second, simple averages would tell nothing about the existence of discrimination. The key lies in what happens at the margin, when one compares people in similar economic circumstances.

One can debate how best to ensure that all borrowers are treated fairly, but the importance of evaluating borrowers according to their individual economic characteristics and not some group average is an objective one would expect NATIONAL REVIEW to endorse.

Lynn Elaine Browne
Federal Reserve Bank of Boston
Boston, Mass.

Dr. Browne protests too much. As a professional economist she knows the ambiguities that surround even the most careful statistical analysis. If only the Fed's study were that! Its principal data source—home mortgage applications—rivals employee résumés as a depository of false information. The Fed says race matters, yet its model omits crucial variables, including the applicant's net worth, home equity, and condition of the property. Whites generally score better on these items than blacks, so their omission gives the unwarranted appearance of racial discrimination.

Qualified applicants of all races are approved by mortgage lenders. The Boston study, flaws and all, confirmed this. But even the subtle discrimination allegedly uncovered by the Fed's statistical model lacks real-world support. Alicia Munnell, one of Dr. Browne's co-authors, admitted in a Forbes *interview that "there was no relationhip between the racial composition of the tract and the default rate," adding that the study's treatment of default rates was "definitely not an adequate look at all."*

In other words, the data clearly imply that white and black mortgagees default at about the same rate. This finding, first noted by Peter Brimelow and Leslie Spencer in Forbes, *indicates that bankers tolerate no more risk from white applicants than they do from black applicants.*

Admittedly, census tracts are not individuals. But it would be quite a stretch to imply, as Dr. Browne does, that census-tract default rates don't say something about how the predominant race in the tract is treated.

Well, who cares about a few mistakes? Ultimately the Boston Fed study provided the pretext for vicious attacks on the banking industry by the Clinton Justice Department and HUD. In order to appear "statistically correct" many bankers now impose racial quotas on themselves. It's not hard to envision a time when the mortgage decision will be purely statistical: all applications scoring 50 per cent or above on some arbitrary criteria will be approved; all the rest rejected. In banking's Brave New World loan officers would be replaced by computers.

Dr. Browne takes great pains to distance her study from the regulatory onslaught carried out in its name. She should communicate her reservations to the crusaders inside the Beltway. —ER

Magazine Tax

In "The Week" [Jan. 23] you praise "the new magazine from the Library of Congress," *Civilization,* for being "attractive, amusing, interesting, well researched, and well written."

Now, this magazine may be all that you say. But what business is it of the Library of Congress, a government agency, to start a new magazine? Why should the Library of Congress be using our tax dollars to publish a magazine? The Library of Congress has thrived for 200 years without a magazine, and can jolly well thrive for another 200 without one.

Bruce Allardice
Des Plaines, Ill.

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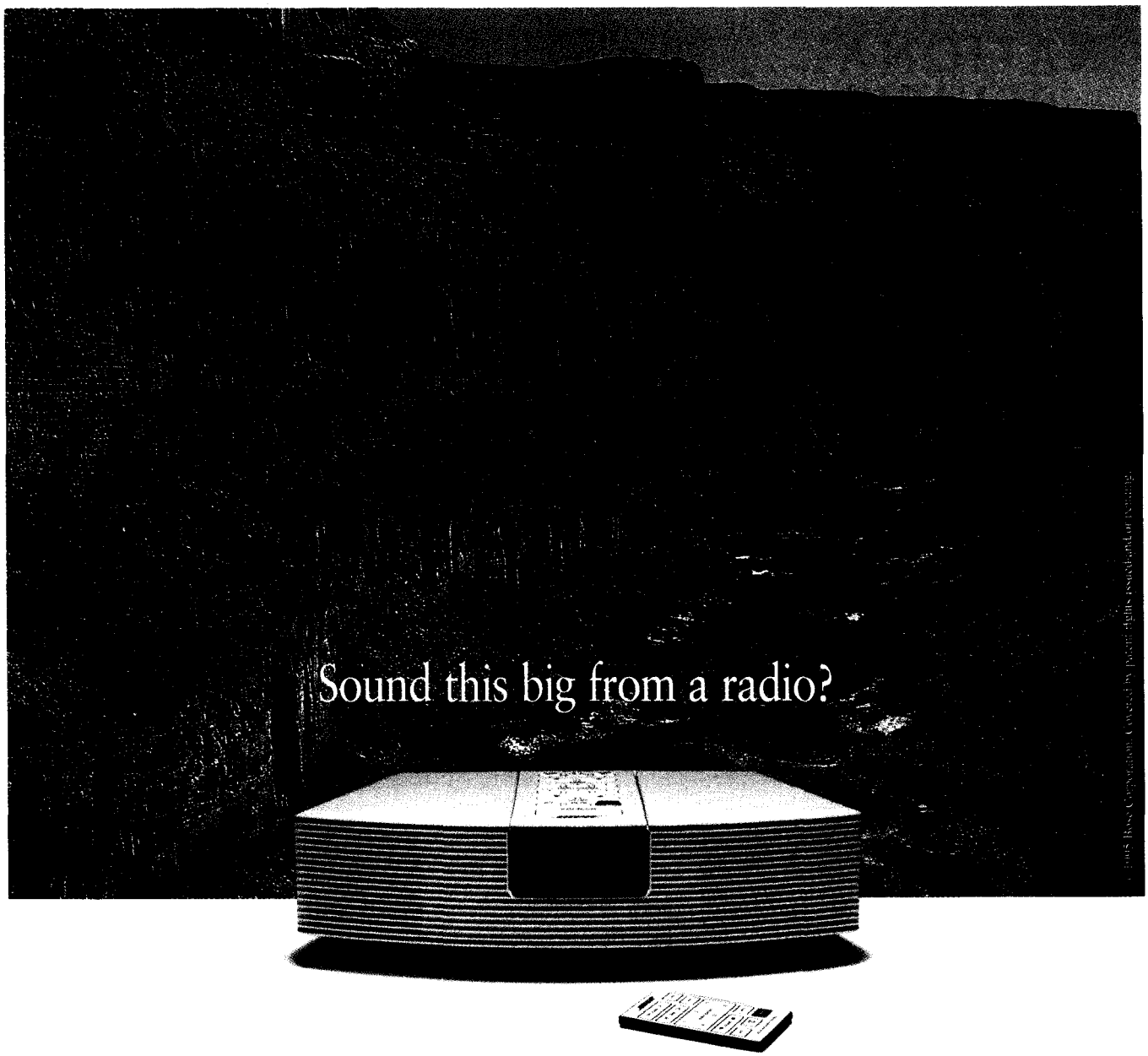

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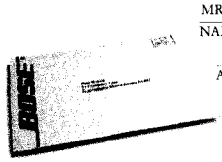

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FROM THE EDITOR

Purpose of Amendment

■ When I first came to the United States, I found that the various political debates in which I got embroiled tended to reach the same dead-end.

Take prayer in the public schools. After battle had begun around the table, I would propose a compromise: Why not divide the children, for half an hour daily, into classes based not on age, but on religious denomination?

Each class would be taught its religion by a priest, rabbi, or minister, brought in for the occasion. Thus, the prayers, hymns, and doctrines could be dogmatically fullblooded (in the case of "Faith of Our Fathers," literally so), rather than some tepid mixture drawn up by bureaucrats to offend no one.

At the same time, no child would be made to feel "different" since all children would be aware of the reality (and tolerability) of religious differences. Even if agnostic parents who did not wish their children taught any faith could arrange for readings from Bertrand Russell or John Dewey by the school atheist. Result: everybody happy.

■ As soon as I had outlined this little utopia, people on both sides of the argument would say "Unconstitutional," as if that settled that. And because I came from a constitutional tradition of avowed flexibility (the dictum that "the British Constitution is whatever Parliament does" is not really accurate, but it will do in a pinch), I found this finality irritating. My feeling was: If the Constitution forbids a sensible proposal, then change it.

Mature reflection has convinced me that I was right. Since the judges change the Constitution, generally in the guise of "expanding" (i.e., manufacturing) minority rights, why shouldn't the rest of us change it back?

A lucid examination of the legal history of the First Amendment by Robert Bork in the latest *Commentary* establishes—beyond any small doubt left standing after M. Stanton Evans's persuasive account in *NR* of the Founding Fathers' support for the public role of religion—that the Supreme Court has essentially invented constitutional reasons for driving religion from public life (as opposed to favoring one religion over all others).

So we must change the Constitution in order to restore it. The constitutional amendment is one weapon whereby we can protect majority rule against such judicial usurpation.

But many Americans seem to feel that there is something "unconstitutional" about using the amendment process (specified in the Constitution) while accepting the perversion of judicial review as its regular workings.

Yet as long as the people shrink from using the amendment process, the courts will abuse judicial review and we will increasingly get the opposite of majority rule, which is not minority rights but minority rule.

■ We have a blonde on the cover this week; it will be interesting to see if it increases newsstand sales.

And thinking of blondes, I cannot help feeling Sharon Stone's career is being mishandled. She has become typecast as a glum blonde, scowling her way through mayhem and murder and giving us little reason to like her. This is a mistake—there are only so many times audiences want to see a blonde smoulder, pout, and glower even if she undresses too.

But over Christmas I saw a different Sharon Stone in the light-hearted adventure movie, *King Solomon's Mines* (very loosely based indeed on the novel) where she played a two-fisted but accident-prone blonde nuisance, forever getting in the way of the hero.

She demonstrated here what I have always suspected: that she can play comedy, indeed that she is a natural for those good-natured, feisty, comradely, blonde roles that used to be played by Carole Lombard in the screwball comedies of the Thirties and Forties.

Alas, they don't write those roles any more. But they might do if Miss Stone asked them. —JOHN O'SULLIVAN

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FOR THE RECORD

■ **Phil Gramm** grabbed early attention in race for '96 GOP presidential nod with C-Span broadcast of stump speech before Iowa Sportsmen's Association. Gramm's folksy approach—despite a PhD in economics—and populist aphorisms on issues from welfare to crime to Mexican peso crisis repeatedly brought standing ovations from gun-owners, who are strong force in Iowa's pre–New Hampshire caucuses. . . . Gramm and other contenders—like former Tenn. Gov. **Lamar Alexander**—already running hard because of little-noticed but momentous change in nomination process since '92 election cycle: early bunching up of major GOP primaries (especially in South) may mean race will be decided in February or March. . . . Presidential hopefuls also intensifying their campaign-apparatchik talent hunts. Alexander showed D.C. he is serious by landing hot TV-ad guru **Michael Murphy** and former **Ollie North** spokesman **Mark Merritt**, while Gramm is consulting on strategy with experienced, affable **Charlie Black**. Gearing up for his own '96 announcement, Senate Majority Leader **Bob Dole** brought in **John Sununu** protégé **Dan Carney**, who ran '94 GOP Senate campaigns. Long-shot candidate Sen. **Arlen Specter** (R., Pa.), who is running on anti-social-conservative platform, has **Roger Stone** as strategist. . . . On Democratic side, the **James Carville**, **Paul Begala**, **Stanley Greenberg** triumvirate that got **Bill Clinton** into the White House now on the outs with Prez because of '94 debacle. Clinton admeister **Mandy Grunwald** also in disfavor. According to Democratic National Committee spokesmen, retainers paid to these four consultants ($780,000 in total) are now under review. . . . Main effect of Clinton's State of the Union marathon is to weaken him further on Capitol Hill, as its length (1 hour 22 minutes) continues to evoke memories of his worst political moment—interminable, someone-get-the-hook address to 1988 Atlanta Convention. . . . *Pittsburgh Post-Gazette* cites public-relations expert **Fred Hoar** for insight into why Congress grew restless during address: "About 80 per cent of the audience of after-dinner speeches are having sexual fantasies." . . . Selection of N.J. Gov. **Christine Whitman** as respondent to Clinton gave GOP leaders huge headache as social conservatives flooded D.C. offices with protest calls. Reason: Whitman goes out of way to antagonize GOP Right by celebrating *Roe* v. *Wade* and pushing hard for gay rights. Behind Whitman's attempt to outdo Arlen Specter is usual palace politics. She pulled out '93 race against incumbent Gov. **James Florio** by embracing **Reagan**esque tax-cut plan, which her original advisors opposed. Same advisors now warning her against Reaganesque stance on social issues. Unaware of damage being done to boss nationally these advisors see fact that Whitman is now favorite Republican of *New York Times* as a political coup. . . . Calif. Gov. **Pete Wilson**, who has also antagonized Right, is trying to refurbish image with Reagan-like moves as he thinks about presidential run. Formerly pro-tax, Wilson now pushing tax-cut bill and education reforms that have gotten him in tough fight with teachers' union.

■ As Contract with America proposals proceed on Capitol Hill, Speaker **Newt Gingrich** is looking to conservatize Democratic Party by working with what he terms its "reform wing." "We don't want to debate the Democrats," said Gingrich. "We've won the debate. The welfare state is over." . . . Washington lobbyists for avaricious trial lawyers growing frantic as Republicans appear serious about pushing Contract provisions for tort reform and limitations on liability damages. In addition to House support, Sen. **Mitch McConnell** (R., Ky.) and freshman Sen. **Spencer Abraham** (R., Mich.) are pushing hard to limit contingency fees and give litigants incentives to settle suits. . . . Consensus to push deregulation also developing fast. *USA Today* reports warm reception given ABC's *20/20* consumer reporter **John Stossel**, who told bipartisan group on Capitol Hill that regulation "suffocates the economy" and "in most cases does more harm than good," while "the market polices itself."

"I see we've already taxed your imagination."

■ North Korea continuing to move long-range artillery and missiles closer to Demilitarized Zone separating it from South Korea, reports *N.Y. Post* columnist **Lally Weymouth**. . . . Some of the havoc wreaked by Kobe earthquake is due to Japanese rigidity in building design, says **Nigel Priestly**, structural-engineering prof at University of California. Long thought to be ahead of U.S. in earthquake-proof buildings, Japanese design is inferior, Priestly says, because it stresses brute strength in support columns instead of flexibility. . . . Famous German work-ethic something of a myth, according to *N.Y. Times* story by **Craig Whitney**. Attempts to make German economy more competitive by extending 35-hour work week and allowing stores to open on weekends and stay open past 8 P.M. ran into stiff opposition from workers. . . . International travel was up 3 per cent in '94; highest gains posted by Pacific nations: Indonesia (18 per cent), Taiwan (14), New Zealand (13), Australia (12), and China (11).

■ *Wall Street Journal* reports entrepreneurs gave following revenue-raising suggestions in answer to GOP House Budget Committee survey: "Rent out soldiers as nightclub bouncers, paint the Washington Monument pink until Congress balances the budget, and charter Air Force One for bachelor parties."

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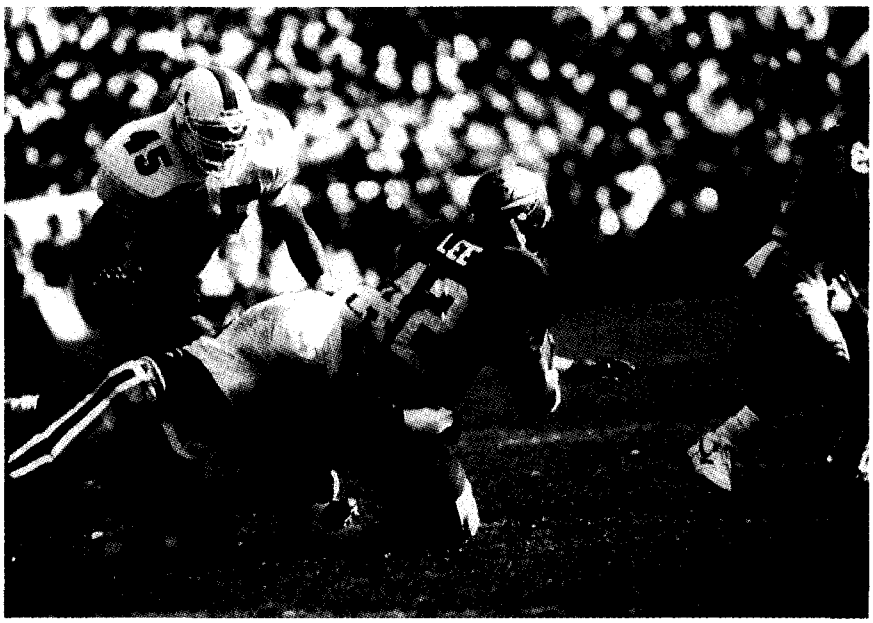
Turning Dreams into Realities



The "Hitachi Promise of Tomorrow" scholarship program encourages student athletes to take the lessons learned on the football field today and teach children in the classrooms tomorrow.

Encouraging Student Athletes to Become Teachers

During his three years as nose guard on Louisiana State University's football team, John Mawae came to know the thrill of victory and the agony of defeat. But nothing moved him more than working with disabled children in a Special Olympics held at LSU. "Seeing those kids realize their dreams against all odds really got to me," Mawae recalls. "I knew then what I wanted to do: help kids like them realize their dreams."

Mawae will get that chance, thanks in part to the "Hitachi Promise of Tomorrow" scholarship program created by the College Football Association (CFA) and sponsored by Hitachi, Ltd. Started last academic year, the program awards $335,000 in scholarships at the 67 CFA member universities. At each university, a $5,000 scholarship is awarded to an outstanding senior or graduate student who intends to become a teacher and has participated in the school's football program as a player, trainer, or manager. Mawae, a 1992 scholarship recipient, intends to use his grant to pursue a career teaching kids with special needs.

"Teaching plays an important but undervalued role in society," says Charles M. Neinas, the CFA's executive director. "We'd like to encourage more student athletes to pursue this field, because we think that what they learn on the football field helps to make them effective teachers in the classroom."

Nicole Hagner, a recent University of Pittsburgh graduate, agrees. "Athletics teaches you that it's possible to turn the right dream into a reality through hard work, discipline and teamwork. I'd like to bring that lesson to the classroom," she says. Hagner, who served as a student trainer on Pitt's football team, plans to use her grant to become certified as a high school biology teacher.

Nicole Hagner, University of Pittsburgh graduate and 1992 scholarship recipient.

As college football fans and parents of school-age children, we are proud to be a part of the "Hitachi Promise of Tomorrow" scholarship program. We hope that it helps more student athletes like John and Nicole to realize their dreams of becoming teachers.

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THE WEEK

■ We had hoped to comment on President Clinton's State of the Union address, but as this issue went to press he was still speaking.

■ The bad news in the Senate is that one man can gum up the Republican agenda. The good news is that the man is Senator Robert Byrd of West Virginia. Byrd's week-long stall of the bill curtailing unfunded mandates was a nice summation of the state of his party: reduced to delaying for delay's sake legislation supported by all but ten Democratic senators and by a wide swath of Democratic state and local officeholders. At least last year Republicans were obstructing legislation they actually *opposed*. Meanwhile, Senator Byrd's prominence keeps an old face on a party that desperately needs fresh ones; at one point during floor maneuverings on the bill, the seven-term troglodyte treated new Minority Leader Tom Daschle like a page, eliciting clucks of sympathy for the outgunned South Dakota Democrat even from Republican bystanders. In the Senate, we have seen the Democratic future; it looks a lot like the Democratic past.

■ Dick Armey referred to "Barney Fag," then instantly corrected himself: "Barney *Frank*." Liberals went nuts. "Bigotry aforethought," cried the *New York Times*; "a strategy of hatred and division," claimed Representative Nita Lowey (D., N.Y.). After receiving an immediate and unvarnished apology from Armey, Frank put an *I'm deeply troubled by this* look on his face and announced, "I don't believe it was on the tip of his tongue, but I do think it was in the back of his mind." Considering how assertively indiscreet Mr. Frank has been in talking about (what ought to be) his private life, it's easy to see why his sexual orientation would be in the front of anyone's mind, never mind the back. If the fact that he's a homosexual bubbles up accidentally in the speech of a colleague, that's Barney Frank's problem. As gay activists like to say, Get used to it.

■ What member of Congress recently accepted an advance for a book deal with a big-time publisher connected to a sprawling media empire? None other than Barney Frank, Democratic attack dog on all fronts. According to his 1991 congressional ethics disclosure form, Frank received an advance of somewhere between $15,000 and $50,000 from Random House—owned by media mogul S. I. Newhouse—for penning *Speaking Frankly*. Mr. Frank was carrying on in the tradition of Al Gore, who cashed in on his Senate seat and then the Vice Presidency with a $100,000 advance for his scintillating *Earth in the Balance*, which netted another $850,000 in royalties through 1993. Senator Paul Simon has written 14 books. Even former Representative Marjorie Margolies Mezvinsky (remember her?) reportedly bagged a hefty advance for *A Woman's Place*. None of which has stopped the Democrats from smearing Newt Gingrich for agreeing to write a book for a $1 advance and no more royalities than Mr. Gore. Next on Democratic shelves? *Silenced: The Inside Story of My Bid to Degrade the House, and How It Failed*, by Carrie Meek (D., Fla.).

■ Who *was* that? *Somebody* talked and talked and talked and talked, but who? Yes, yes, President Clinton, but who is that? This was *another* reinvented one we haven't seen before. We still don't know who the new one last week was, or the one the week before that, or the one next Tuesday afternoon. 1992 is setting records that will stand forever for the most Presidents elected in one election. And we thought we were getting only two.

■ When a politician's lawyer starts describing his actions as an "oversight," and calls criticisms of them "technical," our antennae quiver and tingle. It seems that Secretary of Commerce Ron Brown, now two years in office, has still not answered some difficult questions about his financial affairs. Brown failed to report certain income on his financial-disclosure statement, and may even have evaded his tax liabilities and misled Congress. He has repeatedly denied any connection between First International Communications, a company he owned part of, and Corridor Broadcasting, though the latter company allegedly paid off some of Mr. Brown's debts and was the main source of income of the former one. Time to apply the "Meese Test." If all this were being said of Ed Meese, would

"What snobs, those Rileys!"

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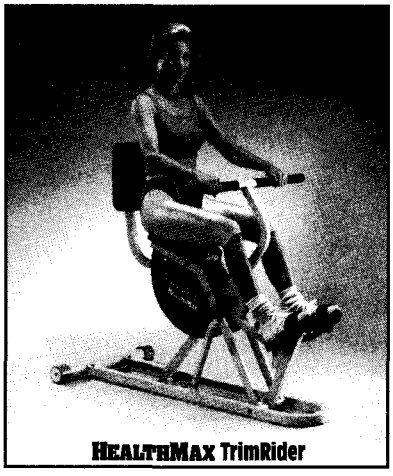

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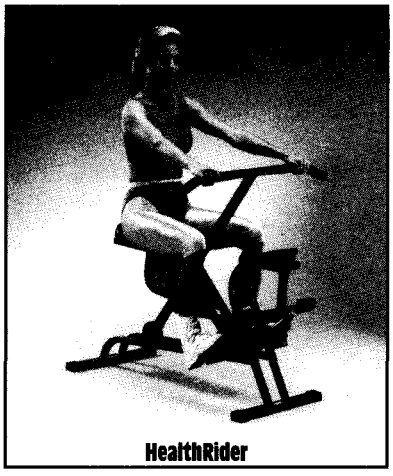

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Their expensive, glamorous TV commercials mean a much, much higher price for you.

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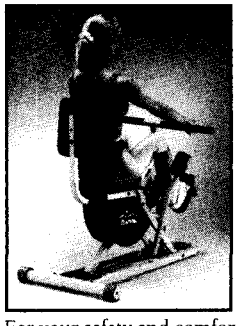
1 Low price	☑ YES **$199** (plus $59 S/H)	☒ NO **$499** (plus $45 S/H). Most people pay $565 to include cost of installments.
2 Aerobic conditioning	☑ YES You get a total-body aerobic workout.	☑ YES **BUT...**why pay $300 more?
3 Strength conditioning	☑ YES Conditions upper and lower body muscle groups. Easily adjusts to tone muscle groups *you* target.	☑ YES **BUT...**remember, you pay $300 more!
4 Bench press capability	☑ YES Has crucial bench press capability for building and toning chest, arm and shoulder muscles.	☒ NO HealthRider lacks the important bench press capability.
5 Seat back support for safety and comfort	☑ YES Lets you do more kinds of exercises with greater confidence.	☒ NO *Not* included! More proof you get more for less with HEALTHMAX TrimRider.
6 Option to isolate leg muscles	☑ YES You can do isolated leg presses if you wish, thanks to the seat-back support feature.	☒ NO Watch out! No seat back means leg presses are *virtually impossible!*
7 Adjustable handlebar and foot pedals	☑ YES Handlebar and pedals adjust easily for comfort and variety of exercises.	☑ YES **BUT...HEALTHMAX** TrimRider offers a greater range of adjustments for greater variety in your workout.
8 Roll-away feature	☑ YES Rollers make TrimRider easy to move and store.	☒ NO HealthRider has no rollers; must be lifted or dragged.
9 Electronic workout monitor	☑ YES Tracks time, calories burned, repetitions per minute, and total reps.	☑ YES **BUT...**you get the same with HEALTHMAX for $300 less!
10 Payable in easy installments	☑ YES Just 5 installments of only $39.80 (S/H added to first installment).	☒ NO You must first pay $169 (includes 4% "service charge"), then $99 a month for four months. Total—$565!
11 Easy and fun to use	☑ YES We're so sure you'll love HEALTHMAX TrimRider, we give you a 30-day money-back guarantee... no questions asked.	☑ YES **BUT...**by choosing HEALTHMAX, you'll also have fun thinking about the $300 you saved!



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congressional Democrats and the *Washington Post* be demanding a special prosecutor?

■ Supporters of the right to keep and bear arms had hoped that repeal of last year's "assault weapon" ban would be an early priority of the new Congress. But many Republicans are leery of the issue, which they consider a political liability, and the National Rifle Association has agreed not to press for repeal until after the House wraps up the rest of its crime legislation. Despite the fears of the Republican leadership, the "assault weapon" ban is not some strange obsession of a few gun nuts. It represents the principle that the flimsiest excuse for an argument is enough to trump the Second Amendment. The ban singled out weapons based on scary looks rather than function or popularity among criminals, and will have no significant effect on crime. Advocates were able to drum up support for the ban only by blurring the distinction between semi-automatic weapons and the machine guns that most Americans (and many members of Congress) thought the measure dealt with. The Republicans should expose the deception and the contempt for constitutional rights that underlies it.

■ The Treasury Department has invented "Time-Off Awards"—up to 80 hours of paid, non-sick-leave, non-vacation time off as a reward for, well, doing something right or ahead of schedule. These standards are much too rigorous. The country could save billions by paying all bureaucrats to stay home all the time.

■ Attorneys for insuffragette Shannon Faulkner told a federal court of appeals that she will never compromise her effort to sue her way into the Citadel, South Carolina's 152-year-old military school. "The Citadel does not have a God-given fundamental right to be all-male," said one. Of course it does, but liberals are as usual appealing to higher authority.

■ After campaigning as a tough-on-crime conservative, New York Governor George Pataki wants to cut sentences for drug dealers. There is no contradiction here. To fulfill his promise of keeping violent criminals locked up longer, Governor Pataki needs to free up prison space increasingly occupied by non-violent drug offenders. In 1982, 11 per cent of convicts admitted to New York's prisons were drug offenders, and 53 per cent of new inmates were considered violent. During the next decade, as the number of cells tripled, the share of new inmates who were drug offenders rose to 44 per cent, while the share who were violent offenders dropped to 35 per cent. The shift resulted from stepped-up drug-law enforcement combined with harsh mandatory sentences. The same combination has caused a similar shift in the federal prison system. Resources that could be used to incapacitate robbers, rapists, and murderers are instead used to imprison small-time drug dealers. Pataki has recognized the recklessness of this policy. Will Congress?

■ The Port of New York and New Jersey, the oldest and largest port on the East Coast, is slowly dying because federal agencies won't allow it to be dredged. It is a river port with a natural average depth of 18 feet. Modern container ships and tankers need 40 to 50 feet, so there has to be constant dredging to keep it from silting up. For several years now the Environmental Protection Agency and the Army Corps of Engineers have been refusing permits to dump the dredge materials. The EPA has tightened its standards for dioxin, requiring that any dredge material have less than 10 parts per trillion (ten years ago dioxin couldn't be detected at these levels); and when the EPA isn't calling for tests, the Army Corps is "processing" (i.e., sitting on) dredging permits. Appropriately enough, visits to Lady Liberty are in jeopardy because the feds won't give dredging permits to the ferry company that takes visitors there. If 11 parts per trillion of dioxin in the bed of the channels of the port are not a deadly menace to the environment, how do they become such a menace when moved ten miles out into the Atlantic Ocean? The new Congress should do a little channel clearing of its own by stripping these agencies of the power to obstruct the nation's business.

■ Toasting each other with Russian champagne, U.S. and Vietnamese diplomats in Hanoi celebrated the signing of an agreement to open "liaison offices" in each other's capitals—the first step in a restoration of political and economic relations. The celebration was unseemly. According to a new book (*Inside Hanoi's Secret Archives*, by Malcolm McConnell with Theodore G. Schweitzer III), Hanoi brutally murdered hundreds of U.S. POWs before the 1973 Paris Agreement and has lied about it ever since. Yet the Clinton Administration claims that "progress" in resolving the POW/MIA issue is a justification for better relations. There *is* a geopolitical argument for establishing ties with Hanoi—namely, the growing fear of China in Southeast Asia. There are also businessmen who see a large market for U.S. exports. Others seek a kind of absolution for America's "sins." For us, the only argument that has any force is that opening up Communist Vietnam to Western influence is the best way to subvert the regime. This could turn out to be true—but we doubt it's the Administration's true motive.

■ Perhaps the most moving of the twenty-thousand-year-old cave paintings discovered in southern France was the depiction of a waiter being rude to a tourist.

■ Bill Clinton now seeks to interject the Federal Government into baseball's labor dispute. The strike, he said, isn't just harming the economy, it's also "trying the patience and depressing the spirits of millions of

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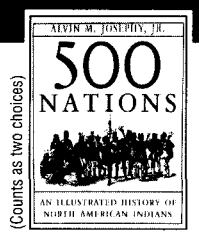

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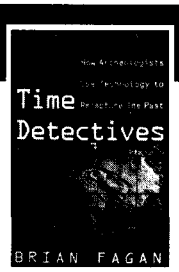

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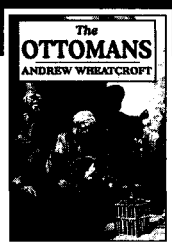

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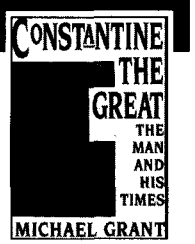

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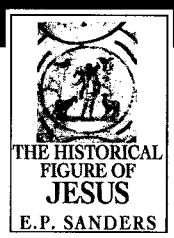

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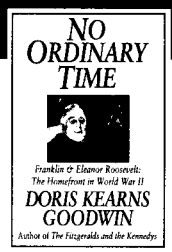

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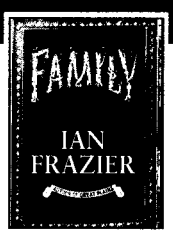

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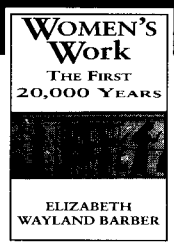

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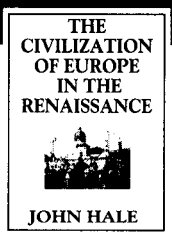

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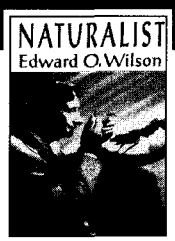

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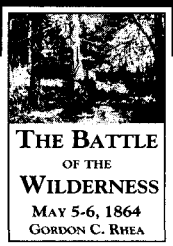

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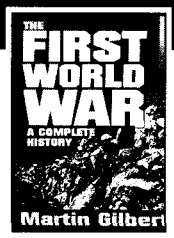

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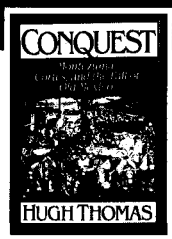

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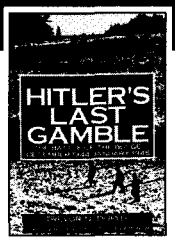

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baseball fans—including me." Aside from government by mood swings, there *is* something the Federal Government can do: it (Congress, that is) can remove the baseball industry's exemption from the antitrust laws. Seventy-two years ago, the Supreme Court said baseball was neither a business nor in interstate commerce and therefore wasn't covered by the antitrust laws. That decision was wrong, as the Court has subsequently admitted—while leaving it to the legislative branch to correct the error. Congress, however, listening to the cooing of multimillionaire team owners, has over the years declined to act. Because baseball players can't sue the owners under the antitrust laws, their only recourse when contract negotiations reach an impasse is to strike. If the exemption were removed, the players could play ball while their lawyers fought in court. Don't buy your season tickets until Congress throws out a new ball.

■ The National Council of Senior Citizens, an unabashedly Democratic lobby that gets nearly all its money from the Federal Government, or has until now anyway, is holding its biennial gala at the Trump casinos in Atlantic City. They probably figure they'll have better odds of winning financing there than from the new Republican Congress.

■ The National Center for History in the Schools, the government-funded group that late last year released dubious standards for the teaching of American and world history, has been taking a beating at the hands of its critics, including the Senate, which condemned the standards on January 18 by a 99 to 1 vote. The stakes in the fight remain high. For though the guidelines were to be non-binding, they would have gained national stature when given the imprimatur of the Department of Education. The "standards" mentioned Robert E. Lee not once, but the Ku Klux Klan 17 times; praised Aztec culture without mentioning human sacrifice; and treated Western civilization as just one among many, not specially deserving of more comprehensive coverage. Unless, of course, it was in the wrong, when it took center stage. Though non-Western cultures are indeed worth learning about, choices must be made and priorities set. As historian Elizabeth Fox-Genovese has pointed out, teaching history involves "deciding what is important." And knowledge, like charity, should begin at home. The flap has inspired the National Goals Education Panel, a bipartisan group set up in 1990, to seek alternatives to federally driven guidelines. The ideologues have been held back for a day, but those guided by right reason must remain vigilant, for the barbarians who produced the original guidelines are legion—and within the gates.

■ CORRECTION: Our February 6 Contents page referred to one of the contributors to "Gekko's Guide to Prosperity" as Robert Hertog. His name, as correctly given in his byline, is Roger Hertog.

■ Bill T. Jones is an HIV-positive choreographer who decided that his ailment entitled him to become an expounder of the meaning of death. *Still/Here*, a "concert" on national tour, uses videos of dying folk Mr. Jones interviewed in workshops. Arlene Croce, ballet critic of *The New Yorker*, announced that she would not see the piece, declining to submit herself to victimology and manipulation, and the roof has fallen in on her, as the culturati make her out to be some kind of foot-soldier of the Religious Right. Many moons ago, Miss Croce was a senior editor of NATIONAL REVIEW, a post she left because she wanted to devote herself wholly to dance. That devotion remains, which is why she wants to review dance, not Oprah in leotards.

■ Casting the title role of his next movie, *Nixon*, Oliver Stone has been considering Warren Beatty, Tom Hanks, and Robin Williams. The director's strong grip on reality is once again confirmed. Next up on Mr. Stone's To Do list: *Clinton*, the motion picture, starring either Jeremy Irons, Hume Cronyn, or Ice-T.

■ Armey-ism of next week: Janet Waco.

Down Mexico Way

I'd never co-sign any note.
The act of signing's so remote,
If waves of wetbacks waded through
The Rio Grande as I yelled "Shoo!"
I'd hold that pen at arm's length till
The ink dried up inside the quill.

W. H. VON DREELE

A Night at the Races

EVEN ON the day of the State of the Union, the White House was letting people know that the President would speak for about 35 minutes. One of *NR*'s senior editors, watching the speech in a TV studio green room with a gaggle of pundits, thought Mr. Clinton had had a fair half-hour run, and that he would do nicely to start heading around the clubhouse turn. Then a techie, grey and shaking, announced the latest word from Washington: the speech was 14 pages long, and Clinton was only on page 8. The pundits had to comment *in medias race*, since the show had only limited use of a satellite. When they finished their segment, and passed back out into the green room, Clinton was still going strong.

The President's rhetorical problems are personal—

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he talks too long because he cannot focus. But his personal problems are ideological—he cannot focus because there is nothing to focus on. The State of the Union recycled slogans from the 1992 campaign, primarily the (not so) New Covenant. The New Covenant, Mr. Clinton explained, "inject[s] choice and competition and individual responsibility into national policy." But since it also proposes to "unite us behind a common vision"—which, for Democrats, means common programs—it is always subject to constituent pressures and statist trade-offs. So welfare reform went glimmering early in Clinton's term. The Rodham–Magaziner health-care plan took center stage instead because, for all its loose ends, it was more real,

Right Data

Missing the Point

TAX CUTS for business investment and capital gains? "The real problem," argues the *New York Times*, "is that these two ideas would *harm* the economy by steering some individuals toward worthless investments." Their inclusion in the GOP's Contract "fuels suspicion that its real motives lie elsewhere—perhaps lining the pockets of favored benefactors."

In the zero-sum world of *Times* editorials, more for the capitalist invariably means less for the worker. Fortunately, the real world isn't like that. Living standards of American workers rise or fall with the amount of capital their employers are able to invest in them. Tax the boss, and you tax the worker also.

In 1990 the average American manufacturing worker was supported by $98,598 worth of machinery, structures, and other capital, according to the Department of Commerce. In the oil and gas industry, capital investment was an astronomical $1,027,273 per worker. Service industries invested just $21,495 per worker.

Recent research by New York University professor Edward N. Wolff traces the stagnation in real wages to slower growth in capital investment per worker. From a peak of 2.0 per cent per year in the 1950s the growth rate of capital per worker slipped to 1.2 per cent per year in the period 1977–1992. We still have the largest base of capital invested per worker—and the average U.S. worker produces more, on average, than his foreign counterparts, according to Wolff. But our lead is shrinking.

Over the long haul, worker productivity—GDP per worker—is vital because it determines growth in wages and living standards. From 1950 to the early 1970s average annual productivity growth of 2.3 per cent per year helped put two cars in every suburban garage and instill confidence that the economic future would be still better. Since 1975 we've slowed to a crawl—0.8 per cent per annum—while worker productivity in Europe and Japan has expanded at more than twice ours. The U.S. ranks dead last among industrial nations in the fraction of GDP devoted to investment. More ominously, since 1986 our investment rate has fallen.

U.S. tax policy explains much of this, and so the trend is unlikely to reverse itself without a policy change. Savings incentives were weakened when, as part of the 1986 Tax Act, IRAs were no longer deductible and capital-gains tax rates were raised. Since 1990, and particularly since 1993, marginal tax rates have been increased by more than 50 per cent at the top.

Although the 1986 act reduced corporate tax rates, it also lengthened the time over which capital expenses must be depreciated and terminated the investment tax credit. According to Arthur Andersen & Co., companies subject to the corporate Alternative Minimum Tax are currently allowed to deduct only 58 per cent of their investment expenses (on a present-value basis), as compared to 98 per cent under the pro-investment tax regime in effect from 1981 to 1985.

The Contract would resurrect many of the savings incentives lost since 1986. Wealthy families generate a disproportionate share of national savings, so the tax benefits are necessarily skewed: 30 per cent of the benefits would go to the 2 per cent of families earning more than $200,000 per year.

But as America ages, ordinary workers will be called upon to support a growing army of retirees. More capital will be the key to their economic survival.

—ED RUBENSTEIN

STILL FIRST, BUT FOR HOW LONG?

	GDP Per Worker		Investment	Maximum
	1992 Level	Avg. Annual % Incr.(a)	As a % of GDP(b)	Capital-Gains Tax Rate
U.S.	$50,504	0.8%	13.9%	28.0%
France	48,262	2.2	15.0	18.1
Germany	44,986	1.9	14.7	Exempt
Canada	43,712	1.2	15.3	23.8
Japan	38,572	2.8	24.1	20.0
U.K.	37,231	1.7	14.3	40.0(c)

a. Average annual percentage increase, 1975–1992.
b. Average, 1973 to 1992.
c. Index to Inflation; First £5,500 of gains are exempt.
Source: OECD.

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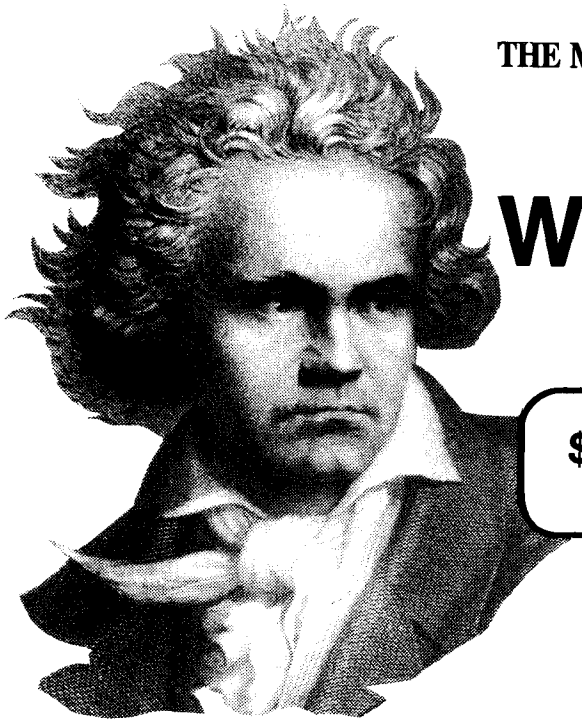

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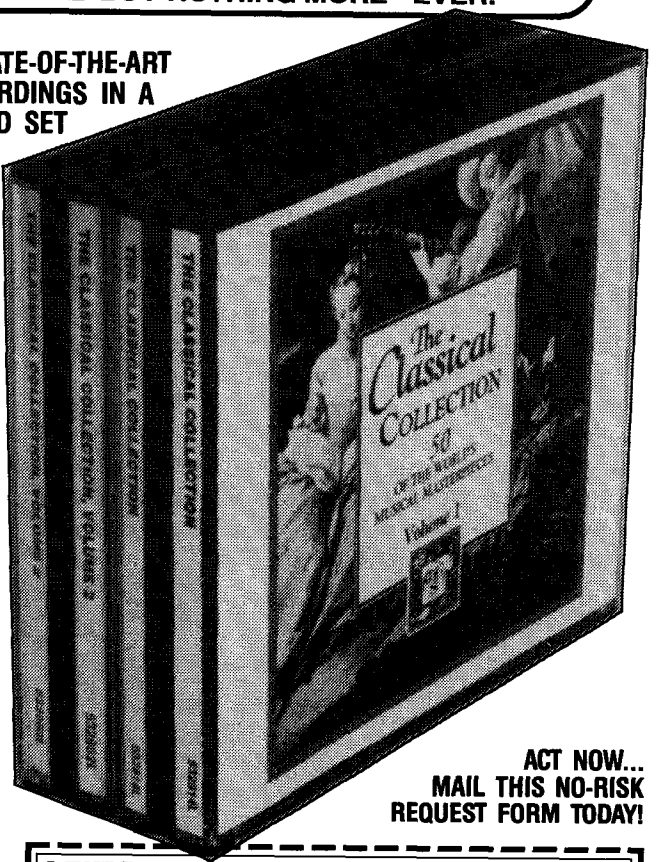

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being socialist vote-buying in the old style. Clinton had two years to bring forward anything that was really new in the New Covenant; by now it's old news.

New Jersey governor Christine Whitman's response was oratorical white bread, but it made a simple point: while Clinton has talked about cutting taxes for the middle class, Republican governors have actually done so. Clinton's weakness tempted Mrs. Whitman to shy away from the social issues that so many Republican freshmen rode to victory. This Presidency is so enfeebled that GOP moderates understandably believe they can beat it with economics alone—just as they could probably beat it with social issues alone. But the voters want, and the country needs, both. With Clinton moving out to pasture, Republicans should strive to lead boldly on all fronts, not to hedge their bets.

Fresh Ideas

ONCE UPON A TIME, a first-year congressman fresh from a briefing with the chairman of the Federal Reserve would have been a little wide-eyed, not to say awed. Freshman Republican Zach Wamp (Tenn.) may have been both those things after hearing Alan Greenspan make the case for the peso bailout, but he was also unabashed. (Greenspan is "a whole lot smarter," said Wamp, than he himself and other folks in east Tennessee, abut "I'm going to vote with them this time and not Mr. Greenspan.") After the first month of the 104th Congress, the bulging Republican freshman class is proving every bit as ornery as touted. On the Mexican bailout, while Bob Dole and Newt Gingrich did the Washington thing and made bi-partisan noises at the White House, the freshmen did the Topeka, Dubuque, and Bismarck thing: asking why taxpayer money would be put at risk for the sake of Mexican politicians and Wall Street banks.

Meanwhile, when it seemed the House leadership might go too far to appease the group of twenty-some moderates opposed to the three-fifths tax-limit provision in the Balanced Budget Amendment, the freshmen pulled just as aggressively the other way. "The wrong signals were sent, very early on," says Roger Wicker (Miss.), echoing the complaint of his classmates. In the end, the leadership didn't set up the Balanced Budget vote as restrictively as many freshmen wanted—a three-fifths version or nothing—but it put up a more spirited fight than it might otherwise have done and has agreed to push for a separate tax-limit amendment in 1996.

By the way, one of the two freshmen who refused to vote for the stripped-down amendment on tax-limit principle, Mark Souder (Ind.), was pointedly not invited to the press conference announcing the new tax-limit effort. Nancy Johnson (Conn.) and other rebellious moderates were not similarly chastised.

Fortunately, there's no relief in sight for those Republicans ready to see their junior colleagues settle down. The most reform-minded members of the group are meeting twice weekly, and have been dubbed the "New Federalists." (An ongoing project: identifying drastic cuts in the federal behemoth.) Just what Old Washingtonians need. Fire at will, gentlemen.

Hello? 1917?

Is this Kerensky's Moscow?
  Does some seditious train
Approach Helsinki Station?
  Does Boris feel no pain?
Will, from dark Lubyanka,
  A Stalin reappear?
The tarot cards are iffy.
  The entrails are unclear.

W. H. VON DREELE

Mexican Holdup

AT FIRST glance the Clinton Administration's new Mexican bailout plan looks like a bad deal—and at second glance too. Failing to generate any congressional support for the original $40-billion loan-guarantee package, the Administration sidestepped Congress altogether by using executive authority to draw down roughly $20 billion from the Treasury Department's Exchange Stabilization Fund. This back-pocket cash account was set up in the late 1940s to be used as short-term loans to keep foreign currency values at par with the dollar, while the dollar remained tied to gold at $35 per ounce. The ESF requires no new budget authorization from Congress; nor does the proposed use of $17 billion from the International Monetary Fund and $10 billion from the Bank for International Settlements. All told, the new Clinton plan adds up to $47 billion, *presumably* to support the Mexican peso and cover Mexico's debt-repayment liquidity problem.

We say "presumably" for the simple reason that the purposes of this money and the policy conditions attached to it are at present non-existent. Messrs. Clinton, Rubin, Dole, Gingrich, et al. have placed the whole responsibility for the assistance plan in Alan Greenspan's lap. Congress has washed its hands, the White House will take a powder, and even the Treasury will be off hunting other game. It is left to Mr. Greenspan to call the shots for the United States.

But will he call them for Mexico? And, if so, what conditions will he lay down? Washington insiders privy to the new proposal believe that the Fed chairman will

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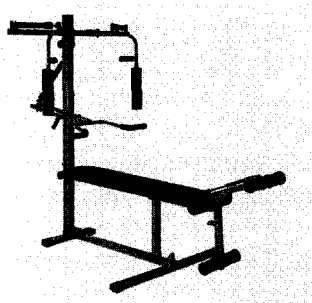

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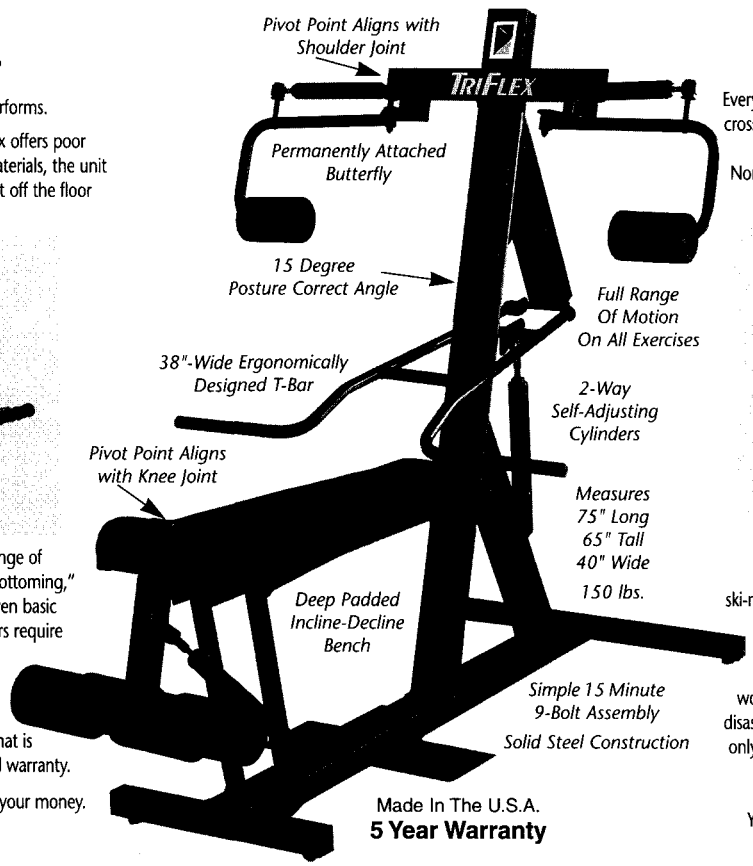
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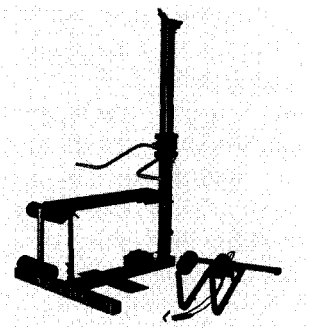

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stop the peso's fall in value—which has lately reached a staggering 45 per cent. Greenspan would then end Mexico's crawling peg and re-link the peso to the dollar at a fixed price, which would mean pledging to honor all promises to repay pesos and peso-denominated issues at a steady and predictable exchange rate. Finally, he would allegedly work to re-establish a steady monetary standard for the dollar at a ratio of $350 per ounce of gold.

Unfortunately, no mention has been made of lifting the draconian wage and price controls imposed on Mexican workers and businesses, nor of reversing recent Mexican tax hikes. Without such changes, a bailout (however organized) will simply constitute an encouragement to future folly by the Mexican government. But changes are unlikely—unless the international bureaucrats who initially created these ruinous policy conditions, namely, Lawrence Summers of the Treasury, Stanley Fischer of the IMF, and Ted Truman of the Fed—have suddenly converted to free markets and stable money.

A skeptic might suggest that the Clinton Administration is merely using taxpayers' dollars to achieve unilaterally what it could not get through Congress. Of course, miracles can happen, and Alan Greenspan could be canonized as a saint, but for the moment color us agnostic.

Hidden No Longer

THAT cracking sound you hear might be the credibility of Alicia Munnell and her band of crusaders. We speak of our old friend, the Federal Reserve Bank of Boston economist who in 1992 coauthored a study charging mortgage lenders with racial discrimination. (See "Letters," p. 4.) According to her statistical "model," blacks were 60 per cent more likely to be rejected for mortgages than equally qualified whites. The findings triggered vicious attacks on the banking industry by the Clinton Justice Department and HUD. Alicia Munnell found herself promoted to assistant secretary of the Treasury.

The party line was first challenged by Peter Brimelow and Leslie Spencer in a *Forbes* article titled "The Hidden Clue." They observed that blacks and whites defaulted on mortgage loans at about the same rates. If bankers really forced black applicants to jump higher financial hurdles than white applicants, then you would expect blacks to default at lower rates than whites. Conclusion? Although bankers may indeed reject blacks more often than whites, this is not evidence of racism, since a higher proportion of whites than blacks meet the objective, non-discriminatory criteria for advancing loans.

Alas, Mr. Brimelow and Miss Spencer may have spoken too soon. Discrimination does exist—but against whites. That conclusion falls out of the latest Fed study, an examination of 220,000 Federal Housing Administration loans made between 1987 and 1989. It showed that black borrowers defaulted at about twice the rate of whites, with Hispanics defaulting somewhat more frequently than whites. Why have bankers been making these unwise loans? Well, they seem to have replaced their erstwhile goal, protecting their depositors, with a new one, avoiding litigation. And this mindset was firmly entrenched even before the Boston Fed raised the issue to national prominence.

It's too early to tell what impact, if any, this latest study will have. Opposition to the government's twisting of banking regulations was already gathering support from Marge Roukema (R., N.J.), chairman of the House Financial Institutions and Consumer Subcommittee. Another hopeful straw in the wind is HUD's withdrawal from a plan that would have used government mortgage agencies to enforce the nation's fair-lending laws.

Oddly, Larry Lindsey, the Fed governor in charge of the Fed's mortgage-discrimination policy, is noncommittal about the new study, allowing as how "You never establish truth, but you move toward it." That's a fair response for an academic. But surely Mr. Lindsey knows that the "truth," as defined in Washington, is whatever moves toward a bigger and more meddlesome government. His support for the new findings could foreclose a bankrupt policy.

Wages of Sin

ONE in three children is now born out of wedlock, and before long the figure will be one in two. High rates of juvenile crime, school failure, drug use, and welfare dependency are all linked to the increasing number of children raised by single mothers. Which is why a major goal of welfare reform is to reduce the illegitimate-birth rate—and why the Contract with America includes a welfare-reform bill offering an array of social services for unwed mothers under 18, including supervised maternity homes, to replace cash benefits.

Most pro-life opinion is on the right side of this debate, with Congressman Jim Talent (R., Mo., and the leading conservative welfare reformer), the Christian Coalition, the Traditional Values Coalition, and the Eagle Forum recognizing that welfare has been a major factor in high rates of sexual activity, illegitimacy, and abortion. But some pro-life advocates now counsel lawmakers to oppose these provisions.

The National Right to Life Committee argues, for instance, that cash benefits may encourage an unmarried teenager not to have an abortion. In individual cases that may be so—just as in individual cases the provision of condoms to teenagers may prevent concep-

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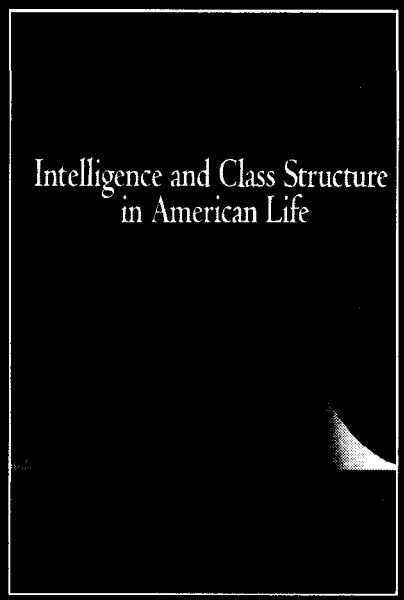

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- The emerging white underclass: low intelligence, low morals, low income – and a social time bomb
- The best preschool program for maximizing IQ: loving parents, healthy families. Reasons
- The coming "custodial state": a chilling picture of a probable future

Cause of the breakdown: declining morals.
Cure: return to the old ways

The conclusion is inescapable: traditional morals – reinforced in law, popular culture and social policy – must guide the kind of decisions that make sense for all people, whatever their IQs. The alternative is a new, horrible brand of class warfare. And, maybe, complete social breakdown.

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tion. But the overall effect of condom distribution is to increase the number of pregnancies by removing a moral disincentive to teen sex, and the overall effect of cash benefits is to increase the number of abortions by removing an economic disincentive to conception. The more pregnancies out of wedlock, the more abortions there will be—now and in the future. Girls born to single mothers, for instance, are twice as likely to engage in early sexual activity and thus to be candidates for abortion.

The economic arguments of pro-lifers opposed to welfare reform would have bizarre effects if applied generally. They would mean favoring a higher minimum wage and opposing any attempt to hold "deadbeat dads" responsible for their children (since they would then pressure expectant mothers to have abortions). In general, these arguments abandon any attempt to restore personal moral responsibility, replacing it with short-term financial incentives. But that is exactly the mixture that has produced the present epidemic of illegitimacy and abortion. Why embrace it now?

Opposing abortion and illegitimacy should be part of the seamless garment of respect for morality. Beware those Solomons who would divide it.

The Forerunner

WHEN Jack Kemp announced that he would not run for President in 1996, it was with an air of inevitability. "My passion for ideas is not matched with a passion for partisan or electoral politics," Kemp said, and indeed his political and ideological antennae had grown blunt in his four years at HUD and his two years at Empower America. On some of the cultural and social issues which have become so pressing, he was at odds with most conservatives (coming out against California Proposition 187 was the most recent example). On most of them, he was in step—yet in talking about them he seemed to have no passion, nor yet the easy confidence of Ronald Reagan.

Ronald Reagan (and Newt Gingrich), however, both owe him an enormous debt. Kemp was a key figure in transforming the psychology of the GOP in the late Seventies. He was among the first to insist that Republicans not be tax collectors for the welfare state (which was the political meaning of Kemp–Roth and supply-side economics). Psychologically, he saw the party—and labored to persuade it to see itself—as a natural majority, as something Americans would support, not just because they feared what it opposed, but because they liked what it was for.

Kemp had the rough edges of an autodidact, but he also had the energy and the enthusiasm of one. To talk to him was like watching the sun rise. He joins Bryan, Clay, and (yes) Hamilton on the short list of politicians who affected the country more than many of the eminences we celebrate on Presidents' Day.

At the Water's Edge

IT HAS become a staple of European press coverage—and to some degree of our own—that the advent of a Republican Congress has brought an isolationist turn to American foreign policy. It is no surprise that the Administration touts such a line, to discredit any opposition to its various brilliant initiatives. But the isolationist label not only caricatures the Republican position, it also distracts attention from both the causes of the present mood in the country and the remedies.

There is, certainly, an isolationist undercurrent in the land, reflected in populist hostility to foreign aid, the Mexican bailout, and some other foreign commitments. But the Republican leadership in Congress, even when it shares these specific positions, represents something different—a nationalist view of foreign policy that is more focused on the national interest (in place of a mushy humanitarianism or a wish to delegate sovereignty to the UN), more serious about the national defense, and more grown-up about intervention abroad. What the Republicans recognize is that America needs allies to advance its interests around the world.

Indeed, it is conservative nationalists in Congress who must now save U.S. foreign policy from the damage done by liberal internationalists. Republicans have favored NATO expansion, to consolidate and stabilize the new balance of power in Central Europe. Republicans criticized the North Korean nuclear agreement as a weakening of the U.S. strategic position in the Far East. Republicans advocated a more courageous and forthright posture in Bosnia. Republicans seek a restoration of our military capabilities, so that we will be better able to meet the foreign commitments we have, and repeal of the 1973 War Powers Act, which limits presidential flexibility. Republicans backed NAFTA

Whither Ron Brown?

A windfall in six figures cast
A pall upon his recent past,
While Justice types still check the jack
Accrued from doings further back
And FDIC ferrets root
At bottom lines that don't compute—
Activities that could preclude
Campaign assignments for this dude.

W. H. VON DREELE

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and GATT when the Democrats were under the sway of the protectionists.

A liberal internationalist Administration has done more to discredit internationalism than Ross Perot and Pat Buchanan could have done. It is the job of the Republicans to rebuild the people's confidence that their leaders know what they're doing. That's the best defense against isolationism.

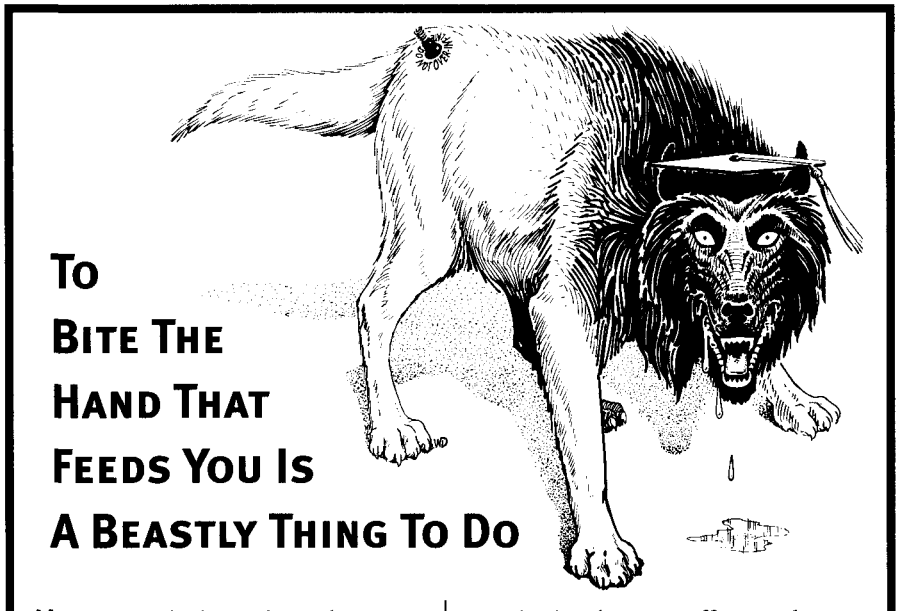
Against Great Evil

FIFTIETH anniversaries acquire a particular poignancy and power because they are the last chance for those actually involved in an event to define its meaning. By the 75th anniversary almost all of the actors will be gone, and the memories of those remaining will be blurred. That is why the 50th anniversary of the liberation of Auschwitz became such a focus of attention, and the occasion of an unseemly scramble between competing victims of the Third Reich, notably between Jews and Poles. Elie Wiesel, himself a survivor of Auschwitz, helped to mediate the conflict, because he "thought it was wrong to have these tensions risking the sobriety and nobility of the event."

In the end there were official ceremonies sponsored by the Polish government and a service at Auschwitz–Birkenau put together at the last minute by Jewish organizers who complained that the government was slighting the Jewish significance of the catastrophe. Most historians agree that more than a million people were killed at the camp, and 90 per cent were Jews. For Poles, however, the Auschwitz ceremonies represented the entirety of the Nazi occupation in which 6 million Poles were massacred, starved, or sent to death camps, with another 2.5 million deported to forced labor in Germany. A little-remarked irony in this dispute was that the Poles, commonly accused of harboring a deep-seated anti-Semitism, were including Jews in the count of Polish victims. The insistence that Jewish victims be put in a category separate from Polish victims, some Poles complained, is precisely the kind of thing that one might expect from anti-Semites.

It is neither surprising nor new that the passions engaged by the horror of Nazism lead to painful confusions and conflicts. The Holocaust is perhaps our culture's only icon of unquestioned evil. Like all icons, it is subject to interpretation and susceptible to abuse. Define the Holocaust too broadly, and the singular evil of anti-Semitism is obscured; define it too narrowly, and it is reduced to a tribal lamentation.

Some say too much has been made of the Holocaust. Stalin and Mao, they point out, committed mass murder on a scale larger than Hitler's; Pol Pot made more of what he had to work with. But we must not fall into the trap of relativizing evil by pitting horror against horror. Each crime against humanity deserves undi-



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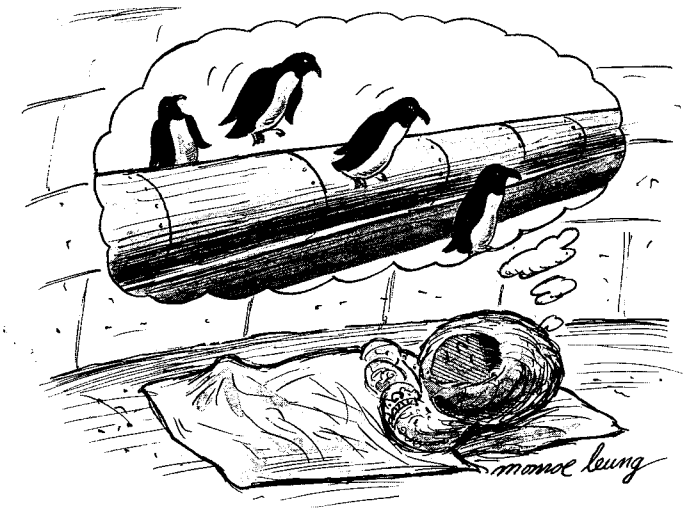

vided attention. All of us have an ultimate stake in the cry, "Never again!" The Nazis declared that some people possessed lives unworthy of life (*lebensunwertes Leben*) and acted out the logic of that doctrine. Today that odious doctrine is promulgated again—against the unborn, the weak and aged, the radically handicapped.

Remembering Auschwitz with "sobriety and nobility" does not guarantee that crimes against humanity will not happen again, but obscuring the remembrance by acrimonious rivalry in ranking the victims can only debase a symbolic safeguard against the great evils of which we are all capable and by which we are all threatened.

Notes & Asides

■ Mon cher M. Buckley:

Alors! According to you and Mr. Dehais, *sauriez* is the second-person plural of the subjunctive. Pas que je sache. Even "conditionally."

In other words, *sauriez* is the present conditional of the verb *savoir*. The present subjunctive is *sachiez*.

Sincerely,
Arlene N. Heath
San Francisco, Calif.

Dear Mrs. Heath: You are quite right. Cordially,
WFB

■ Dear Mr. Buckley:

You gave an instructive example recently of how badly machine translation can work. As a follow-up, I enclose my favorite passage from a recent textbook on computational linguistics.

> Ambiguity is arguably the single most important problem in NLP (see Chapter 5). Natural languages are riddled with ambiguities at every level of description, from the phonetic to the sociological, and in this respect they differ radically from formal languages, such as the propositional calculus or LISP. Yet, as users of natural languages, we are blithely unaware of this pervasive ambiguity—it only comes to our attention in the guise of such linguistically marginal phenomena as puns, misunderstandings, and contested libel suits.
>
> Consider the possible readings of the sentence:
>
> Flying planes made her duck.
>
> One reading is distinctly improbable: it requires us to imagine a female person intermittently lowering her head to avoid a projectile whenever she is engaged in the activity of flying an airplane. Two other readings are semantically quite bizarre: they involve aquatic birds being constructed in improbable ways. So, only one reading remains; namely, that in which she ducks to avoid airplanes that are flying overhead. We will examine later some of the semantic mechanisms used by computational linguists to tackle the problem of ambiguity. This example is a *globally ambiguous* sentence; that is, the entire string of words has more than one structure associated with it.

Regards,
Daniel Starr
New Haven, Conn.

■ Dear Mr. Buckley:

I have a puzzle for you.

I noticed around Christmastime that my mother, were she still alive, would have become 97 years of age last year, the same number as the last two digits of the year that she was born (1897).

This got me to wondering about the occurrence of this meaningless but interesting phenomenon, and I could not get back to sleep what with trying to work it out in my head. I finally got up and figured it out in a table which showed that every *two* years, people born in a certain year in the previous century became the same age as the last two digits of the year they were born:

1998	99	1899
1996	98	1898
1994	97	1897
1992	96	1896
1990	95	1895
1988	94	1894

This was fine, but try as I might, I could not pin down why it happened only every two years. There were too many variables, and my very moderate intelligence could not handle such a slippery problem.

Who had more intelligence than I? Almost everyone, but with you at about the top of the heap. It is a dandy number puzzle, and you are welcome to it.

Regards,
Elizabeth Wilde
Boston, Mass.

Dear Mrs. Wilde: That sort of thing is not my bag, so I'll plead helplessness, along with you. Cordially,
—WFB

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ON THE SCENE

Vendettas

JULIAN MANYON

Fred Carlson

GROZNY

ON December 31, as the first wave of Russian armor tried to grind its way toward the center of Grozny, one Chechen fighter made his own special preparations. He carefully fixed his Hi-8 camera on his balcony and set the lens on wide angle. Then he went down into the street, and when a Russian light tank appeared he blew it up with a rocket grenade, center-frame in his own home video.

Correspondents jaded by other wars have been surprised, even astonished, by Chechen coolness under fire—the fire of a Russian army that still possesses weaponry designed for a World War III battlefield. For all the chants of "Allah Akhbar," the Chechen fighters display none of the shrieky hysteria of the Palestinian armed groups or the wild-eyed fanaticism of the Iranian Hezbollah. There is instead a calm determination that seemed totally at odds with reality until the street fighting in Grozny began and Russia's conscript army came unstuck.

The Chechens have tried to compensate for their lack of numbers by operating in small combat teams, each with its members frequently drawn from the same village or district, with leaders known and trusted by the men they command. Displaying a level of organization that the Russians believed beyond them, the Chechens have managed to resupply their fighters and rotate them regularly out of the combat zone, often after as little as 48 hours in action. This has prevented their inevitable retreat from becoming a rout and may preserve some of their combat potential for the future.

Another striking achievement has been their success so far in protecting their leader, General Dzhokhar Dudayev, from a determined Russian attempt to kill or capture him. Russian propaganda quickly claimed that Dudayev had fled Grozny, leaving the city's defenders to their fate. But when I and other journalists were invited to a secret meeting with him, he was still based inside the shrinking enclave, flitting from place to place in inconspicuous civilian vehicles and complaining that wherever he stopped, Russian air strikes quickly followed. For our meeting security was organized by a young man who had recently completed training as a history teacher and seemed undisturbed by the thought that experts of the former KGB, now FSK, were seeking to outguess him. With apologies, he briefly locked us in the room where the meeting had been held to enable the general to make an unobserved departure.

But for all the dedication he inspires in his immediate followers an important question mark hangs over the small, still dapper, figure of Dudayev himself. Will this man, who has already lost his son in the fighting and who is taking on a deliberate air of martyrdom, go down as a Chechen national hero or as an emblem of tragedy—a leader who failed to unify his people in peace and then stubbornly took them to disaster in a war they could never win?

CHECHEN strengths and weaknesses in this conflict are rooted in an anachronistic tribal structure that Soviet rule and even Stalin's mass deportations failed to eradicate. Dudayev, despite his training as a Soviet nuclear bomber pilot, was powerless to change centuries-old habits which prevented him from forming an effective government in the power vacuum that followed the Soviet withdrawal in 1991. In that interlude loyalties were not to the state but to the clan or mafia gang, disputes settled not in the courts but often by councils of elders applying an ancient Chechen honor code that permits a man who has been wronged to seek redress through personal revenge.

During the fighting we discovered that one of our drivers had recently been involved in a classic Chechen blood feud, which began when his brother was murdered after an exchange of insults with a Grozny mafia baron. Our driver consulted the local elders and then with their blessing killed four of his brother's assassins. Incongruously, he spent his time with us worrying less about Russian shells than about a sudden ambush by his surviving opponents in this vendetta, and it was this peculiar obsession which finally persuaded us to dispense with his services.

Such behavior is one basis for Russia's charge of backwardness and part of the claimed justification for Russian rule. But however true the charge may be, a comparison between the conduct of the two sides in this conflict may be more instructive. The Chechens have in the main fought their war with a conscious nobility which has lost little by being deliberately highlighted in their leadership's propaganda. As far as journalists have been able to tell, Russian prisoners have been fairly treated and frequently returned, and the Chechen soldiers have gone to extraordinary lengths to recover their dead in order to ensure that they are buried quickly, in keeping with the

Mr. Manyon is Moscow correspondent for Independent Television News (ITN). The views expressed here are not necessarily those of ITN.

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Moslem rite. By contrast, the Russian commanders were content to leave scores, perhaps hundreds, of their dead conscripts rotting in the streets of Grozny and rejected Chechen offers of a local truce to enable their recovery. In this, as in the astonishingly crude outpourings of the Russian propaganda machine, we have witnessed a disturbing throwback to earlier standards of Russian military behavior, with all the traditional disregard for the lives of its own soldiery.

But above all, there is the issue some Western governments have shied away from: the deliberate, callous brutality of Russian tactics. Faced with the problem of trying, with poorly trained and often unwilling troops, to overcome a determined enemy, the Russians have resorted to a steamroller of artillery and air power which has been turned against Chechen fighters and civilians alike. Shellfire, rockets, and bombs have been sprayed at random into purely residential areas of Grozny, on a number of occasions hitting houses and apartment buildings close to our ITN camera crew. Road junctions, village marketplaces, even hospitals have been hit, often with cluster bombs packed with hundreds of steel ball bearings, or with shells containing tiny steel barbs. Having several times had to take cover as the jets screamed in to attack yet another civilian target, I can testify that the only conceivable objective was to spread terror. It seems that not only must the Chechens be defeated, they must be cowed and punished for their temerity in resisting Russian rule. Accompanying the bombing and shelling have been the official Russian statements, of a mendacity so routine that it is hardly worth remarking on in a news report any longer. What are we to make of Boris Yeltsin's repeated claim that he wishes to avoid civilian casualties, his "order" to halt the aerial bombing of Grozny, and his statement that breaches of that order will be investigated?

The Russian government has shown a chilling contempt not just for civilized behavior but for essential standards of truthfulness toward the Western countries with which it apparently wishes to be on friendly terms. The spectacle of Russian officials, led by Prime Minister Victor Chernomyrdin, talking up the prospects of a ceasefire on the eve of Andrei Kozyrev's talks with Warren Christopher, only to spurn any such idea a mere 48 hours later, must have caused even the State Department's most seasoned diplomats to wonder if they were being toyed with. The embarrassed squirmings from Washington and London, the protests without teeth, are the product of what the protagonists would say is careful strategic thinking. An enormous investment has been made in Boris Yeltsin, the argument runs. It has already paid clear dividends in the evaporation of military tension between East and West and the breakup of state monopoly structures in the Russian economy, particularly in the globally important fields of energy and raw materials. In addition, a measure of democracy, or at least freedom of speech, has been implanted. These gains, it is argued, are far too precious to be endangered by infuriating Russia in the cause of a little-known tribal people whose aspirations are regrettably destined to be snuffed out.

BUT the screams of women having pieces of shrapnel pulled out of their bodies without proper anaesthetics are difficult to reconcile with *Realpolitik*. And even in that world the quick victory that Yeltsin needed to avoid a political and economic crisis has proved elusive. The West is now confronted with a situation in which failure to speak out may transform us into effective accomplices in the long-term suppression of the Chechen people. Is it now seriously envisioned, as the logical extension of Western policy, that the costs of fresh ammunition and fresh soldiers to complete that suppression should be in part defrayed by Western countries through soft loans from the IMF?

The problem with the policy of "Yeltsin, right or wrong," is that it breeds arrogance and contempt for us in sections of the Russian leadership. Increasingly that leadership has shown itself more prone to tackle problems by knee-jerk reaction than by the more complicated and tiresome process of democratic debate and conciliation. Clearly, a careful strategy based on negotiation and the wrong-footing of General Dudayev, far from universally popular among the Chechen population, would have been a better opening gambit for Russia than sending in the tanks. But it seems that democratic instincts, patience, and above all respect for the lives and welfare of ordinary citizens, both Russian and Chechen, were largely absent when the Kremlin made its decision to invade.

Russia's surviving democrats, now largely sidelined in their country's power struggle, are warning that the war in Chechnya is inextricably bound up with the struggle for democracy in Russia as a whole. Some of the direst warnings have come from Yeltsin's own human-rights commissioner, Sergei Kovolyov, who risked death from Russian shells in his bid to negotiate an end to the fighting. In a recent burst of frustration he described Yeltsin's inner circle as a government of scoundrels.

Western governments need not associate themselves with such remarks, but they will ignore at their peril the views of a man who in the past championed human rights in the Soviet Union from the Gulag. What is happening in Chechnya can no longer be regarded as an obscure or irritating sideshow. It has become a crucial test case for Russia and the world. □

If Yeltsin Only Knew . . .

PETER W. RODMAN

WASHINGTON, D.C.

WHEN Warren Christopher arrived in Geneva on January 17 for two days of long-scheduled talks with his Russian counterpart, Andrei Kozyrev, he told reporters: "The Russian leadership knows they have a problem." He could have said the same about his own leadership.

The Chechen crisis had put the Clinton Administration in an exceedingly uncomfortable position. It was already under fire at home for its uncritical embrace of the Russian bear. Then the geopolitical and human-rights implications of Boris Yeltsin's bloody crackdown in Chechnya only further discredited its Russia policy. The Administration's initial reaction to Chechnya—to dismiss it (and excuse it) as an "internal affair of Russia"—

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only made things worse. Gradually, the Administration began making tougher-sounding statements, calling for military restraint or an end to the fighting. But it had to be pushed. The United States lagged well behind the usually cynical Europeans in its public criticism of Russian policy.

The Geneva meeting had a full plate of contentious issues—not only Chechnya but also Russia's resistance to NATO's plans to expand into Central Europe, its eagerness to end the UN embargo on Iraq, its refusal to provide key data on its chemical-weapons programs, and its determination to sell submarines and nuclear reactors to Iran. All these issues were matters of growing controversy in the United States. Amid all this, the Russians had ostentatiously invited President Clinton to visit Moscow for a summit in May in conjunction with elaborate ceremonies planned there for the fiftieth anniversary of V-E Day. This would be a delicate matter for our relations with our German ally in the best of circumstances; with the fallout from the Chechen war, the sight of Bill Clinton in Moscow, clinking champagne glasses with Boris, promised to be a public-relations disaster.

The Russians didn't make things any easier for Mr. Christopher. Before Geneva, Russian Foreign Ministry briefers played up the May summit with the press and declared that the Geneva meeting would include discussion of preparations for the wonderful Clinton visit to Moscow. They tried to keep Chechnya off the agenda. In the talks in Geneva and in news conferences afterward, Kozyrev rebuffed Christopher's comments on Chechnya with his own counter-complaints, deploring the impact of the Republicans on U.S. foreign policy and claiming that American Presidents had used troops to quell domestic uprisings five times in the past twenty years. (No one on the U.S. side had any idea what he was referring to.) It all seemed too familiar: the propagandistic sparring, the Russian complaints that U.S. human-rights concerns constituted interference in their domestic affairs.

What made the whole episode even more depressing was the dirty little secret that began to leak out: that the Geneva conversations hadn't really been as contentious as all that. Kozyrev had oozed reassurances that Chechnya was just a "transitional event," and Christopher was impressed by Kozyrev's sincerity. The Russians' public blustering was excused by State Department onlookers as being due to Kozyrev's need to protect his position back home. In fact, it became one of Christopher's main goals to "reinforce Kozyrev's position at home and abroad," a State Department official told the *New York Times*.

Likewise, the Administration was still wedded to Boris Yeltsin as Russia's democratic hope. "It's hate the sin but love the sinner," said a European diplomat. The debacle in Chechnya was attributed largely to the bad advice Yeltsin was getting from his coterie. If the Tsar only knew . . . If Stalin only knew . . .

Roman Genn

Christopher remained convinced that Yeltsin and Kozyrev needed bolstering, not chastising, since the alternatives to them were worse. But as they more and more adopt the hard-line policies of their ultra-nationalist opponents, their preferability is shrinking fast.

In fact, the Administration's whole Russia policy is hanging by a thread. Kozyrev had it right: The Republicans are loaded for bear, so to speak, and losing their patience. On December 12 Senator Mitch McConnell (R., Ky.) announced a new foreign-aid policy that would reallocate some of the U.S. aid for Russia to Russia's smaller neighbors, condition the remaining Russian aid on better behavior, and prepare the way for incorporation of the Central European democracies into NATO. Every day that the Chechen war continues is a rebuke to the Clinton Administration, strengthening the hand of the Republicans.

So far, Christopher has managed to use congressional pressure as a bogeyman to exert leverage on the Russians, much as Nixon and Kissinger used the prospect of the Jackson–Vanik Amendment to pressure the Soviets to ease up on emigration. But the Administration risks losing control of the policy, much as Nixon and Kissinger did. When Christopher gave a speech at Harvard after the Geneva meeting, complaining publicly about the Russian sale of nuclear reactors to Iran, there was fear in the State Department that Congress would run away with the issue and insist on cancellation of the sale as yet another condition on Russian aid.

The May summit in Moscow, meanwhile, is on hold. Our President is withholding his commitment for now, hoping for the best. □

Mr. Rodman, an NR *senior editor, is the author of* More Precious than Peace: The Cold War and the Struggle for the Third World, *just out from Scribner's.*

Cutting Edge

LAWRENCE KUDLOW

WASHINGTON, D.C.

IN HIS first two years in office Bill Clinton pushed a Keynesian spending plan for short-term fiscal stimulus, the largest tax increase in history, and a nationalized health-care plan. Now he is suddenly paying lip service to the Republican principles of shrinking government, cutting taxes, balancing the budget, and deregulating the economy. But with the very liberal Senator Chris Dodd (Conn.) in charge of the Democratic National Committee, the even more liberal Harold Ickes gaining influence in the White House, and Mrs. Clinton telling reporters that November 8 resulted from a "communications" failure, it is hard to believe that the Clinton team is really changing its spots.

Mr. Kudlow is NR*'s economics editor.*

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Look at the text of the State of the Union address, and you will see plenty of evidence that the old Clinton is still around. Early on, the President harked back to the New Deal, which "helped restore our nation to prosperity," and urged Americans to retain "government as a partner." He said he is for the line-item veto and downsizing government, but he reiterated his opposition to the Balanced Budget Amendment. Like congressional Democrats, Clinton demanded to know "what you'll cut, what taxes you'll raise, and how it will affect real people."

No bold announcement of departments and agencies to be eliminated is forthcoming from the Administration. Indeed, the President ruled Medicare off the budget-reduction table altogether. He talked about cutting $130 billion out of the budget over seven years—less than $20 billion per year, compared to Budget Committee Chairman John Kasich's early mark of $200 billion in 1996 alone. But in the same sentence the President argued that the young, seniors, veterans, and other groups are entitled to continue receiving benefits.

Meanwhile, Clinton is opposed to tax cuts that would encourage saving, investment, and entrepreneurial risk-taking such as unlimited IRAs, or capital-gains tax relief, or liberalized business depreciation allowances. He also proposed an increase in the minimum wage, an old labor-union nostrum that would surely reduce entry-level jobs. Steady work of any kind should be viewed as a blessing, for it provides on-the-job training and discipline. The sanctity of work is its own reward; wage gains will take care of themselves over time.

All told, this speech was an eighty-minute filibuster designed to flash a right-turn signal to a rightward-leaning electorate. But Republicans had better be careful about this, for Clinton's credibility deficit does not necessarily ensure GOP victory in 1996.

This is why Hill conservatives wanted to exorcise the Bush "read my lips" ghost by passing the Joe Barton version of the Balanced Budget Amendment, which would have required a three-fifths supermajority for any tax increase. This could have been a clarion call that the GOP was not interested in nibbling around the edges but wanted a transformation of the Federal Government.

A clear position that rules out tax hikes on the way to a balanced budget should not be hard to defend. The 1990 and 1993 tax-hike budget deals have slowed long-term economic growth without reducing the budget deficit. Contrary to Bill Clinton's claim that "I have done more to bring down the budget deficit and save money than any President over twenty years," the latest Congressional Budget Office (CBO) estimates show a 1996 deficit forecast of $207 billion, up from last year's $176-billion estimate. "When Ronald Reagan left office," observes Heritage Foundation economist Dan Mitchell, "the deficit was $152 billion and projected to fall in future years. Now, six years and two tax hikes later, the deficit is over $200 billion and projected to increase each of the next ten years."

Unfortunately, the Barton anti-tax-hike version of the Balanced Budget Amendment could muster only 253 votes. Nearly all the Republicans stayed with Barton, with only 8 defections from the liberal Gypsy Moth wing. However, as GOP freshman Jim Tate put it, there were "not enough votes across the aisle," with only 33 Democrats voting for Barton. Key among them was Billy Tauzin (La.), who says the tax limit "is *the* best, most appropriate amendment." Tauzin, who won his southwestern-Louisiana district with a 78 per cent majority in 1994, may well be a key figure in budget deals later this year. He strongly believes that spending is the root cause of the deficit and argues that Congress "could have, should have, and still ought to freeze spending."

In the end, the Stenholm–Schaffer version passed with 300 votes, including 72 Democrats. This version does require a three-fifths vote to change the annual fiscal-year spending and revenue estimates, and three-fifths to raise the debt ceiling, but no supermajority for tax hikes. However, as Majority Leader Dick Armey reasoned, "The perfect should never be the enemy of the good." And, while it does not have the force of a constitutional amendment, the House did pass an internal three-fifths rule for tax increases on the first night of the 104th Congress; as long as the GOP is in power there is no chance of a tax hike.

Unreported in the daily press was the near revolt of the GOP freshman class; at one point nearly 50 of the 73 freshmen were prepared to boycott the Stenholm amendment in order to keep its vote below the earlier Barton total. Under the existing queen-of-the-Hill rules this would have permitted a final vote on Barton. In order to nip this uprising in the bud, Speaker Gingrich agreed to schedule a free-standing vote on the tax-limitation amendment for April 15, 1996. If it does not pass, then Gingrich pledged to work ceaselessly for the necessary 290 votes from that day to the November 5 election. Also weighing in for Stenholm was GOP policy chief Chris Cox, who favors additional constitutional amendments to impose disciplines on policy. "Stenholm comes first, then a separate tax-limit amendment, and ultimately a spending limit will follow."

Meanwhile, since the final 1996 budget-reconciliation package may not pass until October, the House Republicans have an opportunity *right now* to rescind unused 1995 appropriations. President Clinton is expected to send up a supplemental budget bill that would *add* $14 billion to this year's spending level. Why not vote down the bill and force the Administration to cut fat elsewhere if it wishes to accommodate a $3-billion add-on for military operations in Haiti and Iraq, $6 billion in new California earthquake relief, and $4 billion to cover the recent California floods? Perhaps then the Republicans could find another $10 billion of 1995 rescissions on their own.

This would deliver a real message to voters across the country that the new Congress will not deliver business as usual. A Clinton veto of a congressional rescission would help the Republicans make an important political point: We are for real spending cuts; he is not. But Appropriations Committee Chairman Bob Livingston has got to be bolder than he has been up to now.

Sources tell me that Gingrich laid down the law in a recent private meeting with his principal fiscal chairmen, Bill Archer (Ways and Means), John Kasich (Budget), and Livingston. "If the appropriators don't have the courage to implement the Budget Committee marks," Gingrich said, "then I'll find some others who do."

Some GOP members have already started sniping at Livingston, wondering why he retained so many staff holdovers from the Democratic regime, and why he has been reluctant to follow through on his early rescission promise. The Balanced Budget Amend-

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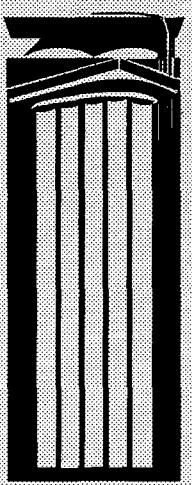

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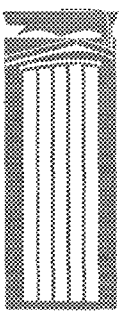

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ment is all well and good, but actual spending cuts are the real order of business. The President may have his right-turn signal on, but he's still in the left lane. It is up to the Republicans to make the actual turn. □

Antidisestablishmentarianism, Italian Style

ANTONIO MARTINO

ROME

ON Friday, January 13, as I landed at Heathrow on my way from New York to Rome, the Italian ambassador informed me that Lamberto Dini, formerly treasury minister, had been asked by the president of the Republic to form a new government made up of "experts" (*tecnici*) having no connection to political parties. The decision came at the end of nearly a month of byzantine political maneuvers and intrigues, which had followed the resignation of Prime Minister Silvio Berlusconi on December 22. All of which was the climax of a nine-month-long political struggle. What follows is an account of the cause and significance of this struggle. Since I was a participant, as foreign minister in the Berlusconi government, you, gentle reader, must make due allowance for bitterness and bias (as well, of course, as my usual bile).

Simplifying a much more complex picture, here is what happened.

In 1993, following an epidemic of political scandals, Italians overwhelmingly voted in favor of a change in the electoral laws, moving from proportional representation (PR) to a majoritarian system. The main reason prompting 80 per cent of the voters to ask for such a change was that they wanted voters, as opposed to party leaders, to choose the government. Under PR, the proliferation of political parties makes the formation of coalition governments unavoidable. Since many different combinations are possible, the coalition that will actually govern the country is not chosen by the voters, but by the political parties. Thus paradoxically, PR is *less* democratic than a majoritarian system like the one in the United States.

Under the new law, as a concession to the old arrangement, 25 per cent of the seats in both houses are allocated on a PR basis, while 75 per cent are elected in American-style single-candidate constituencies. Thanks to the discredit surrounding the old establishment and to an aggressively pro-free-market program, a new political movement, Forza Italia (FI), founded at the beginning of last year by Mr. Berlusconi, a Milan-based entrepreneur, became Italy's major political party only three months after its founding. Together with its allies—the Northern League in the North, and the National Alliance in the rest of the country—it won a majority in Parliament in the elections of March 27, 1994. Almost all the parties of the old order (Christian Democrats, Socialists, Republicans, etc.), which in shifting coalitions had ruled the country for 45 years, were wiped out. A new government was formed with Mr. Berlusconi as prime minister.

BERLUSCONI

Considering that the new government had a clear program and a majority in Parliament, it looked as if it could govern for a full five-year term and implement the drastic liberalizing reforms Italy so badly needs. Unfortunately, the success and popularity of Mr. Berlusconi angered and threatened both the leftist opposition (made up of former Communists, unreconstructed Communists, left-wing Christian Democrats, and assorted lunatics) and Umberto Bossi, the erratic leader of the Northern League. Mr. Bossi was a difficult coalition partner from the start, issuing strong criticisms of the government, withdrawing them, and asserting them again. This may have been, in part, the resentment of the monopolist faced by a new competitor, since until the arrival of Forza Italia, the Northern League had been the sole free-market party of any size in Italy. Whatever the cause, after fitfully supporting the government for eight months, Bossi finally joined ranks with the Left and submitted along with them a motion of no confidence.

One could hardly conceive of a more heterogeneous bunch—the Northern League, committed to radical free-market reforms and federalism, and all the others supporting various versions of the old Big Government mythology. The only unifying element of this Unholy Alliance was hate—they couldn't stand the idea of Mr. Berlusconi succeeding. On December 22, having ascertained that his government had lost its majority in Parliament, Mr. Berlusconi handed in his resignation.

Under our constitutional system, when a government resigns, the president of the Republic, who is normally a figurehead like the Queen of England, allowed to do little more than kiss babies, attend funerals, and cut ribbons, becomes important. It is up to him to decide what to do.

However, the president's powers, even during a government crisis, are more apparent than real. Since Italy is a parliamentary democracy, the president must act on the basis of the situation in Parliament. He will not appoint a prime minister if he knows that the majority of Parliament will not give him its confidence. When there is no viable majority in Parliament—as was the case here because, although the Northern League and the Left could be united in opposing Berlusconi, they couldn't conceivably form a government together—the president should dissolve Parliament and call for new elections, asking the existing government to stay on as a caretaker. Why didn't President Scalfaro do what was obviously his constitutional duty?

Elementary, my dear Watson. Oscar

(Continues on page 76)

Mr. Martino, a Chicago-educated economist, is a former president of the Mont Pélerin Society.

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Can an Intellectual Be Religious?

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License to Steal

TAKE IT AWAY

Popularized by the war on drugs, asset forfeiture has been expanded to cover more and more offenses—whether proven or not. Soon no one's property will be safe.

ROBERT E. BAUMAN

ON the morning of October 2, 1992, Donald Scott, a 61-year-old retired millionaire, and his wife, Frances, were asleep in their house at Trail's End Ranch in the Santa Monica Mountains near Malibu, California. At about 8:30 A.M., the Scotts were jolted awake by the sound of a 27-man police task force smashing through the front door of their home. Frances Scott, racing downstairs, was confronted by a group of men with guns drawn. She screamed in panic: "Don't shoot me! Don't kill me!" In response, her husband rushed to the top of the stairs, holding a handgun above his head. He was ordered to lower the gun. As he obeyed, he was shot to death by Gary Spencer, the Los Angeles County deputy sheriff who led the raid.

Spencer had received what turned out to be a false tip from an informant who said the Scotts were growing marijuana on their ranch. After a five-month investigation of Scott's death, Ventura County District Attorney Michael Bradbury concluded that police not only lacked evidence of marijuana cultivation but had obtained their search warrant by lying to the judge who signed it.

Bradbury also concluded that the raid was in part an attempted land grab. The police hoped to seize the ranch as property that had been used to facilitate a drug crime. There is evidence suggesting that they intended to sell the land to the National Park Service, which had repeatedly tried to buy the property and add it to the adjacent Santa Monica Mountains National Recreation Area. With no legal authority to do so, four Park Service agents took part in the raid in which Donald Scott was killed. Bradbury discovered that at the pre-raid briefing federal agents discussed government seizure of the Scotts' ranch in detail, reviewing a property appraisal and a parcel map showing the value of recent land sales in the area. Bradbury's report stated: "It is the District Attorney's opinion that the Los Angeles County Sheriff's Department was motivated, at least in part, by a desire to seize and forfeit the ranch for the government."

Donald Scott's death flowed directly from a policy condoned and encouraged by the U.S. Congress and by law-enforcement officials from Attorney General Janet Reno down to local police chiefs. Under state and federal civil-forfeiture laws, the government can take property that has been used to facilitate illegal activity or that represents the proceeds of illegal activity. Unlike criminal forfeiture, civil forfeiture does not require that the owner be convicted of or even charged with a crime. The property can be seized on mere suspicion, and the burden is then on the owner to get it back. Such confiscation is now widespread. And although egregious incidents like the raid on Trail's End Ranch have led to some reforms, the reach of civil forfeiture is expanding.

A Bright Idea

ASSET forfeiture was rarely used in the United States until the 1980s but has flourished since, originally as a weapon in the war on drugs. It was a 1981 General Accounting Office report, "Asset Forfeiture: A Seldom Used Tool in Combatting Drug Trafficking," that opened the floodgates.

Forfeiture delivers billions of dollars' worth of property to prosecutors and police, and its disposition is subject to little oversight. Nine studies by the GAO in ten years have shown that forfeited property not used or sold by police is usually trashed or stolen—often by the police. A former Los Angeles County deputy sheriff testified in 1993 that narcotics-squad officers stole $60 million in forfeited cash and property in 1988–89. In 1994 a special commission reported a similar pattern of activity by New York City police officers. More than 25 officers were arrested in New York's 30th Precinct, charged with assault, shaking down drug dealers, accepting

Mr. Bauman, a former U.S. representative from Maryland, is an attorney and writer living in Florida.

ILLUSTRATION BY: KONSTANTIN VALOV

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bribes for protection, and stealing millions of dollars in confiscated drugs and cash.

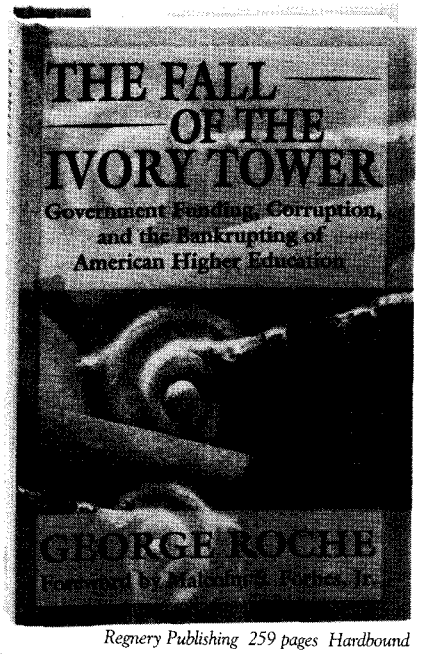
Even when the assets go into government coffers rather than policemen's pockets, the tendency is to encourage police and prosecutors to target people based on the value of their property rather than the seriousness of their alleged crimes. In 1989 acting Assistant Attorney General Edward Dennis Jr. informed all U.S. attorneys that they were "expected to divert personnel from other activities," including criminal prosecutions, to prepare forfeiture cases for judicial action. Testifying before Congress in 1992, former New York City Police Commissioner Patrick Murphy admitted: "The large monetary value of forfeitures . . . has created a great temptation for state and local police departments to target assets rather than criminal activity."

The total value of the property so far confiscated is enormous. Since 1985 more than 200,000 federal seizures of cash and property have netted assisting state and local police a $1-billion windfall. From 1986 to 1991, the U.S. Justice Department took in a total of $1.5 billion from forfeitures. In 1993 the department had an inventory of more than 32,400 real properties from Hawaii to Maine, including office buildings, luxury waterfront homes, farms, and crack houses in slums, with a combined value of more than $1.8 billion. The U.S. Customs Service seized property worth $708 million in 1992, including the 18-hole Royal Kenfield Golf Course in Las Vegas and the Indian Wells Country Club and Resort Hotel in southern California. These figures do not include property seized under state forfeiture laws.

Law-enforcement officials would like the public to believe that civil forfeiture mainly targets "drug kingpins," but the official figures belie that notion. Only 17 per cent of the 25,297 seizures carried out by the Drug Enforcement Administration in the 18 months ending December 1990 involved property valued at more than $50,000. Moreover, in some 80 per cent of successful forfeiture cases, the owner is never charged with a crime. Since it can take $10,000 to $15,000 in legal fees and months, if not years, to contest a seizure in court, many innocent property owners find that it's easier to let the government keep their assets.

Watch Your Wallet

POLICE can seize your wallet or your home on a showing of "probable cause" to believe that a crime has been committed, a feeble legal standard satisfied by rumor, gossip, a police hunch, or self-serving statements made by anonymous paid informants, accused criminals seeking leniency, or jailed convicts eager for early release. Until 1993, when the Supreme Court imposed some restrictions, the mere suggestion of "probable cause" secretly presented to a judge allowed instant seizure of property without notice or prior hearing. After seizure, the owner can reclaim his property only by showing that it was *not* involved in



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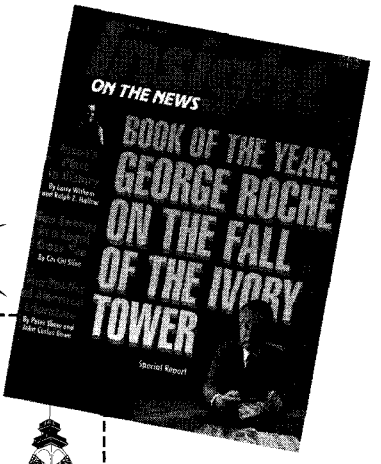

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a criminal act. Even if indigent (a status that asset seizure often confers), the owner is not entitled to a court-appointed attorney. For the privilege of contesting the seizure, he must immediately post a cash bond equal to 10 per cent of the property's value. He is allowed only ten days to file a claim, after which time he automatically forfeits the property. Even if the owner is successful in his challenge, the government is not liable for property damage or for storage costs.

In most cases there is little or no proportionality between the crime alleged and the forfeiture imposed. Hotels are seized because one room was said to have been used for a drug transaction, and landlords lose apartment houses because tenants allegedly conducted drug deals in their apartments. Three fraternity houses at the University of Virginia were seized by local police in 1991 because of alleged sales of small quantities of drugs by students. The alumni association of Tau Kappa Epsilon, the owner of one house, was forced to buy the property back from the police.

Under the Federal Government's "zero tolerance" policy in the 1980s, the oceanographic research vessel *Atlantis* was seized in Massachusetts because a single marijuana cigarette was found in the crew's quarters. In California a Scripps Oceanographic Institute research vessel was seized because of a marijuana roach in the locker of a sailor who had been fired long before. On June 8, 1994, federal agents seized a run-down 621-room residential hotel near Gramercy Park in New York City because of alleged drug dealing and violence. The building was valued at $2.5 million.

The seizure of real estate is so attractive that police routinely arrange arrests so as to maximize seizure possibilities. In setting up an undercover drug buy, police will aim to have the transaction occur inside a valuable building or on a high-priced tract of land, which they can then confiscate. When a small part of a parcel of land is the location of an alleged drug crime, the entire tract is subject to forfeiture. When a drug deal takes place in a driveway, the government can seize the house and thirty acres of land as well. In 1991, marijuana found growing in a remote corner of a five-hundred-acre farm in Indiana justified confiscation of the entire farm, though the owner knew nothing about it.

The threat of forfeiture forces property owners to act as police agents and incriminate others. Innocent owners are defenseless unless they can prove not only that the illegal activity occurred without their knowledge or consent but also that they did all they "reasonably could be expected to do to prevent the proscribed use of the property." Consider what this means in practice. A teenager uses the family car, and a roach left in an ashtray by one of his passengers can mean goodbye to the BMW. Owners who lease out apartments, cars, or boats risk losing their property because of renters' illegal conduct. In Minnesota and Connecticut, police seized homes because a child or grandchild of the owner was found to have pot stashed in his room. Until a federal court ordered it returned, the home of an elderly widow in Alabama was confiscated even though she repeatedly tried to get police to stop her adult children from selling drugs in and near her house.

Under civil-forfeiture theory, when property is used for an illegal purpose, title immediately passes to the government, which can retroactively assert ownership. Until the Supreme Court limited this rule in 1993, so-called "tainted property" acquired by good-faith purchasers could be confiscated at any time, even though the buyer had no knowledge of the alleged prior criminal use. In 1994, when a New York financier was accused of fraud in one of his many businesses, the government sought forfeiture of his entire $400-million corporate empire, including an auto dealership, real estate, a gold mine, and other legitimate enterprises, with no regard for the rights of numerous creditors who were owed millions of dollars.

The Hazards of Cash

THE victims of forfeiture also include motorists and air travelers who commit the offense of carrying cash. For several years in Volusia County, Florida, Sheriff Bob Vogel's "drug squad" preyed upon motorists on Interstate 95 near Daytona Beach. Police assumed that any person found in possession of $100 or more was a drug trafficker. From 1989 until 1992, Sheriff Vogel's squad seized more than $8 million in cash, and in only four cases did the victims get all their money back.

Blacks and Hispanics are especially likely to be targeted, because of the "drug-courier profiles" that police use. In 1992, for example, 75 per cent of air travelers who were stopped by police in the Memphis airport on suspicion of drug possession were black, whereas only 4 per cent of the flying public is black. The DEA maintains full-time confiscation squads at major airports and pays a 10 per cent bounty to airport employees who report "suspicious" people carrying cash. In 1992 *60 Minutes* had a well-dressed black undercover reporter buy plane tickets with cash in several major cities. Within minutes of each purchase, DEA agents accosted the reporter and confiscated his remaining cash.

Not content with applying forfeiture to drug offenses, eager legislators have expanded its reach to a whole range of other areas. A growing number of states, including Texas, Florida, and New Jersey, apply civil forfeiture to any criminal activity. In one New Jersey case, the state seized a company and its assets based on the allegation that it had bid on and obtained three contracts for which it was not eligible—even though the contracts were all performed properly.

In addition to the Justice Department, the DEA, and the Customs Service, federal agencies with statutory forfeiture power include the Internal Revenue Service, the FBI, the Coast Guard, the Postal Service, the Bureau of Land Management, the Fish and Wildlife Service, the Securities and Exchange Commission, the Department of Health and Human Services, the Food and Drug Administration, the Immigration and Naturalization Service, and the Department of Housing and Urban

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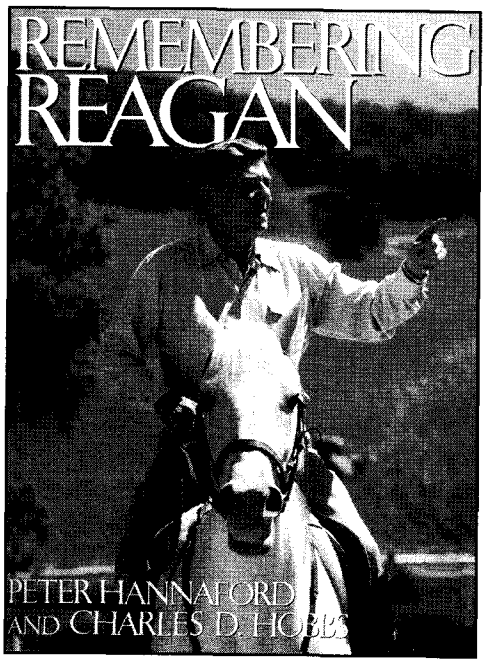

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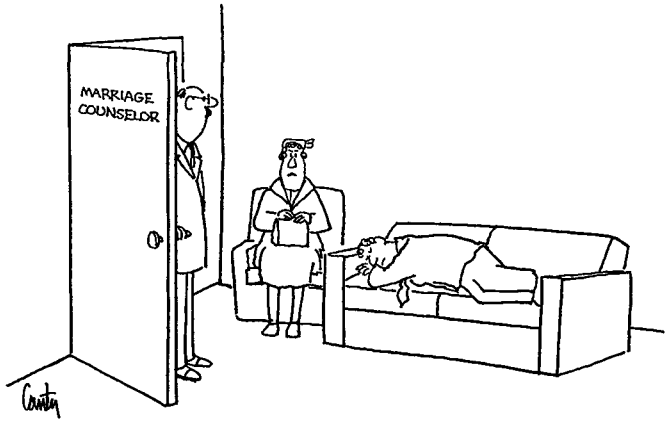
Development. More than one hundred federal statutes include forfeiture provisions.

In the wake of the S&L scandal, Congress tried to curb loan fraud by making it a crime to give false information on a loan application. Using this law years after the loans were made, the feds have begun confiscating real estate bought with the proceeds. In one case, a residence in La Habra, California, was forfeited because the co-owner had falsely stated his place of employment on a mortgage-loan application, even though the loan payments were kept current and the mortgage company had suffered no harm. Asset forfeiture is now applied to health-care professionals suspected of Medicare and Medicaid fraud, even allowing government seizure of patients' records.

In January 1993, federal authorities seized more than $2.5 million in business property, including new cars, from 11 auto dealerships in the Maryland and Virginia suburbs of Washington, D.C., after 19 salespeople were charged with accepting cash payments in excess of $10,000 for purchases made by undercover agents. No use of drug money or tax evasion was alleged. The only crime was the failure to file currency-transaction reports with the IRS, as the Money Laundering Control Act of 1986 requires for cash transactions of $10,000 or more.

In April 1994, U.S. Fish and Wildlife agents in Bakersfield, California, confiscated a farmer's new $50,000 tractor and disk harrow after he allegedly plowed over and killed several Tipton kangaroo rats, a rodent protected by the Endangered Species Act. The local U.S. attorney said the farmer's actions made the equipment "an instrument of crime." The farmer, an elderly immigrant from Taiwan, speaks no English and did not know the rats were on his land. (The agents did know and had failed to warn him.)

There have been some moves to rein in the use of forfeiture. In 1993 the California legislature replaced a fairly broad forfeiture law with a much more restrictive version, and Missouri followed suit that same year. Other states, including New Jersey, are considering doing likewise. But reform at the state level may simply push more forfeiture cases into federal courts, where state and local agencies generally get 85 per cent of the booty. That's why the real solution is in the hands of the Supreme Court and Congress.



In 1993, after nearly three decades of acquiescence in police confiscation, the U.S. Supreme Court established important constitutional limitations on forfeiture. The Court abolished the quaint theory that title to property allegedly involved in a crime automatically passes to the government. It held that until a court renders judgment, an owner has good title and the right to defend it. The Court also ruled that civil forfeiture is subject to the Eighth Amendment prohibition against excessive fines and cruel and unusual punishment. Specifically, it said that a forfeiture could be so disproportionate to the alleged crime that it would be unconstitutional. By holding forfeiture in federal drug cases to be "punishment," the Court opened the door to future due-process challenges asking that presumption of innocence and proof beyond a reasonable doubt apply to forfeiture. Finally, the Court ruled that an owner of real property has to be given notice and a hearing prior to seizure.

Innovative Expansion

POLICE and prosecutors responded to the new rules with defiance. Lee J. Radek, director of the Justice Department's Asset Forfeiture Office, conceded in the May/June 1993 issue of *Asset Forfeiture News* that the decisions created problems for the forfeiture program. But he predicted the Justice Department and police would come up with new methods of "innovative expansion" to get around the Court's holdings.

Consistent with this view, Janet Reno's Justice Department fought a quietly successful battle to keep forfeiture reform out of the 1994 Omnibus Crime Act. The Justice Department also opposed a bill introduced in 1993 by Representative Henry J. Hyde (R., Ill.), the leader of a 56-member bipartisan coalition for forfeiture reform. The Justice Department's own proposed "reform" legislation, leaked to the press last summer, would greatly expand police confiscation powers. David B. Smith, a former head of the Asset Forfeiture Office who now supports major reform, called the department's legislation "overwhelmingly a prosecutor's wish list."

There is reason to hope for action by the 104th Congress. Representative Hyde, the author of a new book on forfeiture published by the Cato Institute, is now chairman of the House Judiciary Committee. Republicans have already promised to present their own crime bill, which could serve as the vehicle for forfeiture reform. Senator James Jeffords (R., Vt.) is leading a similar forfeiture-reform effort in the Senate.

Their efforts seem to have broad support. In the House, Representative Hyde was joined by liberal Michigan Democrat John Conyers, a leading member of the Congressional Black Caucus. In California, the battle for reform was led by Assemblyman John Burton, a liberal Democrat; he was assisted by Assemblyman David Knowles, one of the most conservative Republicans in the legislature. Knowles summed up their position: "This isn't about law and order. This is about police kicking down people's doors and taking their money. It's tyrannical government run amok." □

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THE AMERICAN DREAM MEETS HUD

JAMES McCAFFERTY

KARL and Elisabeth Pfaff emigrated to the United States from Germany via Canada in 1959, and lived and worked in Memphis, Tennessee before retiring to Bellingham, Washington in 1988. As is not unusual for immigrants who come to the U.S. seeking the "American Dream," Mr. and Mrs. Pfaff worked very hard to make a life for themselves and save for their future. With these savings, they began to purchase "fixer-upper" homes in the Memphis area. They personally repaired and modernized the houses, and then rented them out. At one point, they held nineteen rental houses.

In preparation for their retirement, the Pfaffs sold all but two of their Memphis properties. The residents of the two houses retained by the Pfaffs are elderly people who have lived in the houses for many years. The Pfaffs decided not to sell these houses during the tenants' lifetimes.

When the Pfaffs retired and moved to Bellingham, they intended to place their funds in passive investments. At the time, however, the return on investments available to them was low. As a consequence, they decided to purchase rental houses in the Bellingham area, and by 1993 had acquired eight such rentals. All of those houses are in middle-class

(Continues on page West-4)

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WEST WORLD

■ Interior Secretary Bruce Babbitt, reversing an earlier decision, will allow the San Diego Zoo to import two giant pandas from China. The zoo had hoped to acquire specimens of an even more endangered species, but no liberals would agree.

■ The stand-off in the California Assembly over who will be the Speaker has ended. Democrat Willie Brown maneuvered himself into retaining the position by expelling Republican Assemblyman Dick Mountjoy, who has now assumed the seat in the State Senate to which he was elected concurrently in November (see "Loathing and Loathing in Sacramento," January 23). Republicans still hope to unseat Brown in a few months, contingent on the success of a recall effort directed against GOP turncoat and Brown supporter Paul Horcher. Mr. Brown used so much hocus-pocus in the coup d'état, he's being sued for unfair competition by David Copperfield.

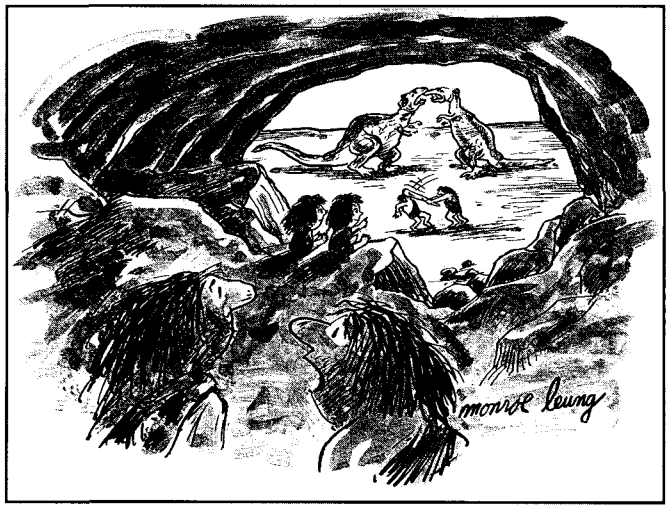
■ Among those who are watching this drama most closely are ferret owners. The little creatures are illegal to own in California. But Bill Philips, executive director of the California Domestic Ferret Association, is upbeat: "This is going to be the year that the ferret community has been waiting for," he declares. It seems the ferret owners' chief enemy in the Golden State is none other than Speaker Brown. Emotions run deep. Pat Wright of the San Diego-based Ferrets Anonymous is the movement's Patrick Henry: "This is supposed to be a free country," he says. "But if you can't have a ferret, then it's not really." The word is that the leader of the Republican Caucus in the Assembly, Jim Brulte—who stands to replace Willie Brown—is firmly on the side of ferret ownership. Governor Wilson has not yet taken a public stand. William Bennett and Jack Kemp are watching him closely, however, lest he compound his error in alienating illegal immigrants by losing the naturally-Republican ferret vote to the Democrats as well.

■ Attorney General Reno is suing California over Pete Wilson's refusal to implement the federal unfunded "motor voter" mandate. It's not known if her boss will send in the troops, should Wilson stand defiantly in the DMV door.

■ Reports appear to be true that the U.S. Department of Housing and Urban Development is investigating the *Statesman Journal* in Salem, Oregon, for publishing an advertisement with a picture of the Easter bunny in its real estate section. An atheist subscriber, it seems, felt offended by the drawing, and deemed the ad discriminatory. HUD took up the man's complaint. Three centuries ago, in another Salem on the other side of the continent, they burned suspected witches. Today we look on them as kooks. But for pure lunacy, we'll put our money on the witch hunters of Salem, Oregon—and their friends in the federal bureaucracy—any day.

■ San Diego has now officially won its bid to host the 1996 GOP National Convention. Many cities are still vying, however, to host the dinner Judge Ito has promised both teams of lawyers upon the conclusion of the Simpson trial.

■ Among the many historic expressions of popular discontent in the Great Midterm Elections of 1994, the voters of Oregon passed Measure 16, reportedly the world's first doctor-assisted suicide law. What has made Oregonians so eager to smooth the way to the Big Sleep? Pundits and analysts continue to hypothesize: Is there more voter frustration out there than we realized? Is this the ultimate escape from Liberalism? Liberalism's logical conclusion? Could it be fear of a new Health Care plan? A suicide pact to counter the Gingrich Contract? Maybe this is what comes of negative campaigning! Environmental determinists may blame the phenomenon on the weather. Inhabitants of the area live under perpetual cloud cover, particularly in the fall and winter months. Visitors be warned: You are exposing yourselves to what is officially known as "Winter Depression" or "seasonal affective disorder." Actually, this is not strictly caused by the weather. In the dark of night the pineal gland, located in the brain,



"I'm worried. The kids spend hours watching all that violence."

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produces a hormone called melatonin. When the nights grow longer in winter—and much longer at the Portland–Seattle latitudes—the pineal gland produces even more melatonin. If we were bears, this would tell us to hibernate. In humans it may be associated with depression. Fortunately, doctors know how to make the pineal gland stop producing melatonin. All you have to do is bask in 2,500 lux worth of light. In fact a popular new industry has arisen called "light therapy," whereby many Pacific Northwesterners recline for a couple of hours a day in the presence of a device called a "light box," which produces the required lux. King County Medical Blue Shield in Seattle will provide the light box to customers who produce a prescription from a doctor. Our prescription? Start sending Oregon insurance providers the voting stubs from November's elections and ask them to ship light boxes by the truck load.

■ According to the latest survey on legal fees, California lawyers made $16.3 billion in 1992, tops in the nation. That amount is expected to be exceeded this year by O.J. Simpson's legal fees alone.

■ The Oregon Water Resources Department and the Confederated Tribes of the Umatilla Indian Reservation, near Pendleton, Oregon, are upset with Bill Nelson. Last summer Nelson established the Church of the Holy Water, which has no reported article of faith other than the worship of the water that happens to lie under the property of a couple dozen faithful farmers who live in the currently very dry Columbia Basin. The state water managers prohibit Mr. Nelson and his fellow congregants from irrigating their fields because of the persistent water shortage. Nelson wants to regain use of the water as a matter of religious freedom. The objections of the hydrobureaucrats are understandable, if mundane. The Indians, on the other hand, are altogether lacking in the ecumenical spirit of the age. They object because Nelson stole the idea of his Church of the Holy Water from their "Seven Drum" or "Washut" religion. As Armand Minthorn of the Cayuse Tribe said, "I don't know how he can do that if he's not Indian himself." Minthorn is cultural resources technician for the Confederated Umatilla, Walla Walla, and Cayuse Tribes, and so should know what he is talking about. Nelson, unabashed, explained with saintly simplicity "how he can do that": "After we get this church started . . . we'll turn on the water." Nelson is a professional songwriter and former disc jockey, and so should know what he is talking about.

■ Toward the end of his life, actor Lee Marvin remarked that he preferred the company of wolves to that of human beings. We would agree with him if most folks behaved like the people currently hell-bent on reintroducing wolves to Wyoming and Idaho. To ranchers who worry about the danger to their livelihoods posed by this policy, one of these people responded: "How do we quantify the cost of an eco-system that has been missing its preeminent predator for sixty years?" According to that argument, aren't we already a year late reintroducing Clyde Barrow to the region of the country bounded by Dallas, Baton Rouge, and Joplin, Missouri?

■ California high-school graduates must be in the top third of their class to be eligible to enroll in the California State University system. In 1993, 48.8 per cent of freshmen enrolled at the twenty California State University campuses failed the entry-level English test and 47.2 per cent failed the entry-level math test. Apart from what this says about California high schools, it means that about half the entering freshmen in the Cal State system have to enroll in remedial courses to prepare themselves for college level courses, which are, of course, dumbed down. Some trustees are now proposing that these very expensive remedial courses be eliminated. This is opposed by the usual suspects because it would have a "disproportionate" impact on minority students and "urban" campuses. A foolproof cure for the problem has been offered by a member of the University of California Board of Regents. Ward Connerly announced that by June he intends to propose putting an end to race-based preferences in university admissions.

■ This is just one of many assaults upon the citadel of affirmative action gathering momentum in California. Most feared of all among liberals is the California Civil Rights Initiative, which would prohibit public hiring and contracting quotas based on race or gender and which is likely to be the centerpiece of the 1996 elections, much as Proposition 187 was the centerpiece in 1994. One Sacramento columnist recently referred to CCRI as "the next freight train." Meanwhile the interest groups are summoning their most powerful arguments. Says Elizabeth Toledo, president of the California branch of NOW: "The idea that people of color and women are getting some sort of helping hand in the workplace is an absolute myth." Earth to Toledo: clear the tracks.

■ As of January 1, 15,900 law-abiding Arizonans had completed a training course and earned a permit to carry a concealed weapon, under a law allowing them to do so which was passed last June. So far no outbreaks of genocide, but we'll keep you posted.

■ It only just now came to our attention that since January 1 it has been illegal in California to be in the possession of the gall bladders of bears. More frustrating: it is no longer permitted to trip horses for entertainment purposes. Great, *now* what are supposed to do for fun on weekends?

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McCAFFERTY
(Continued from page West-1)

neighborhoods, in good condition and well-maintained. Virtually all of their tenants are families, some having as many as three children.

One of the houses purchased by the Pfaffs in Bellingham was in a nearby development known as Sudden Valley. The purchase price was $112,000. The Pfaffs originally purchased this house for themselves, but then decided that it was too far from town for their needs. They would rent it out.

ALTHOUGH the size of the house had been satisfactory for them, it was not entirely suitable for a larger family. The house contains only 1200 square feet of living area. There are only two bedrooms, and a smaller den off the main entryway. There is an undersized two-car garage, a small yard, and no basement. The Pfaffs put the Sudden Valley house on the rental market and leased it to a couple with one child. When that family bought their own home, the rental house again became available. The Pfaffs listed the house with a local rental agency. The rent was to be $850 per month.

A couple by the name of Michael and Beckie Nymoen and their three children—two girls, ages 11 and 7, and one boy, age 9—looked at the house with a rental agent and submitted a rental application. The Pfaffs rejected their application on the basis that they thought five people were too many for the size of the house. The Pfaffs did not meet or personally speak with the Nymoens.

The Pfaffs' rental policy as to tenant family size was the result of 28 years of experience as landlords. It took into account the size of the living space, the physical layout of the rooms, the potential for excess wear and tear, and the likelihood that the tenants would be satisfied with the residence. All these factors relate to the maintenance of the Pfaffs' retirement investment income, including their concern about tenant satisfaction, since such satisfaction leads to long term tenancies.

Shortly after rejecting the Nymoens' application, Mr. and Mrs. Pfaff rented the house to a couple with two girls, ages 8 and 5. It was then that the Pfaffs ran afoul of the Fair Housing Amendment Act.

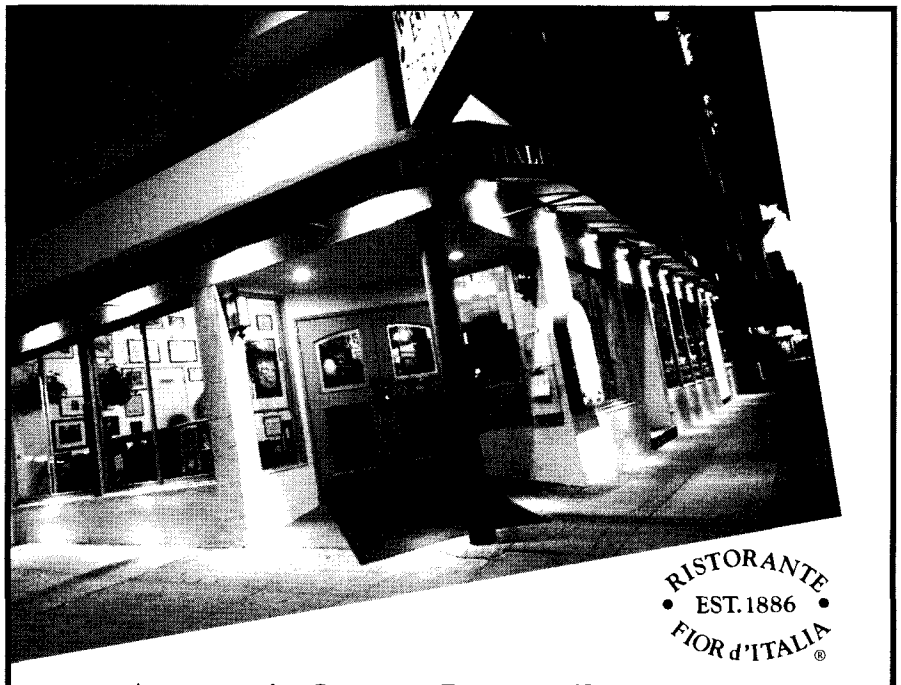
Congress passed the original Fair Housing Act to ensure the removal of artificial, arbitrary, and unnecessary barriers to the availability of housing. In 1988, Congress passed the Fair Housing Amendment Act to prohibit housing practices that discriminate on the basis of "familial status." "Familial status" is defined as one or more individuals under the age of eighteen years being domiciled with a parent or legal guardian—although it is pretty clear that Congress didn't intend to establish a national occupancy standard or prohibit reasonable occupancy requirements based on factors such as those considered by the Pfaffs.

After the Nymoens were rejected, they complained to the Seattle office of the Department of Housing and Urban Development (HUD). As a result of that complaint, HUD brought a proceeding against the Pfaffs, charging them with violating the Fair Housing Amendment Act by refusing to rent a dwelling because of familial status. The proceeding was tried in Bellingham before an Administrative Law Judge who was flown into Bellingham by the government from Washington, D.C.

THE Judge, who is assigned to hear only HUD cases, ruled that the number of members of a family is part of the definition of familial status, and that the Pfaffs had discriminated against the Nymoens. Relying on abstract statistical evidence from HUD employee "experts," the Judge determined that the Pfaffs' reasons for their rental policy were not sufficient to justify the "discrimination." The maximum penalty allowed by law is $10,000, and historically the targets of such penalties have been huge metropolitan apartment complexes with a practice of discriminating against single parent households or families with young children. Still, the judge entered a civil penalty against Mr. and Mrs. Pfaff for $8,000.

But he wasn't done. The Judge then considered the "emotional damages" suffered by the Nymoens at the hands of the Pfaffs. He conceded that embarrassment, humiliation, and emotional

James McCafferty is a retired attorney who resides in Bellingham, Washington.



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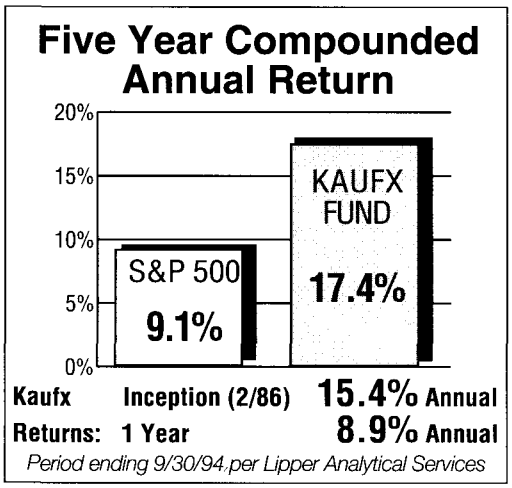

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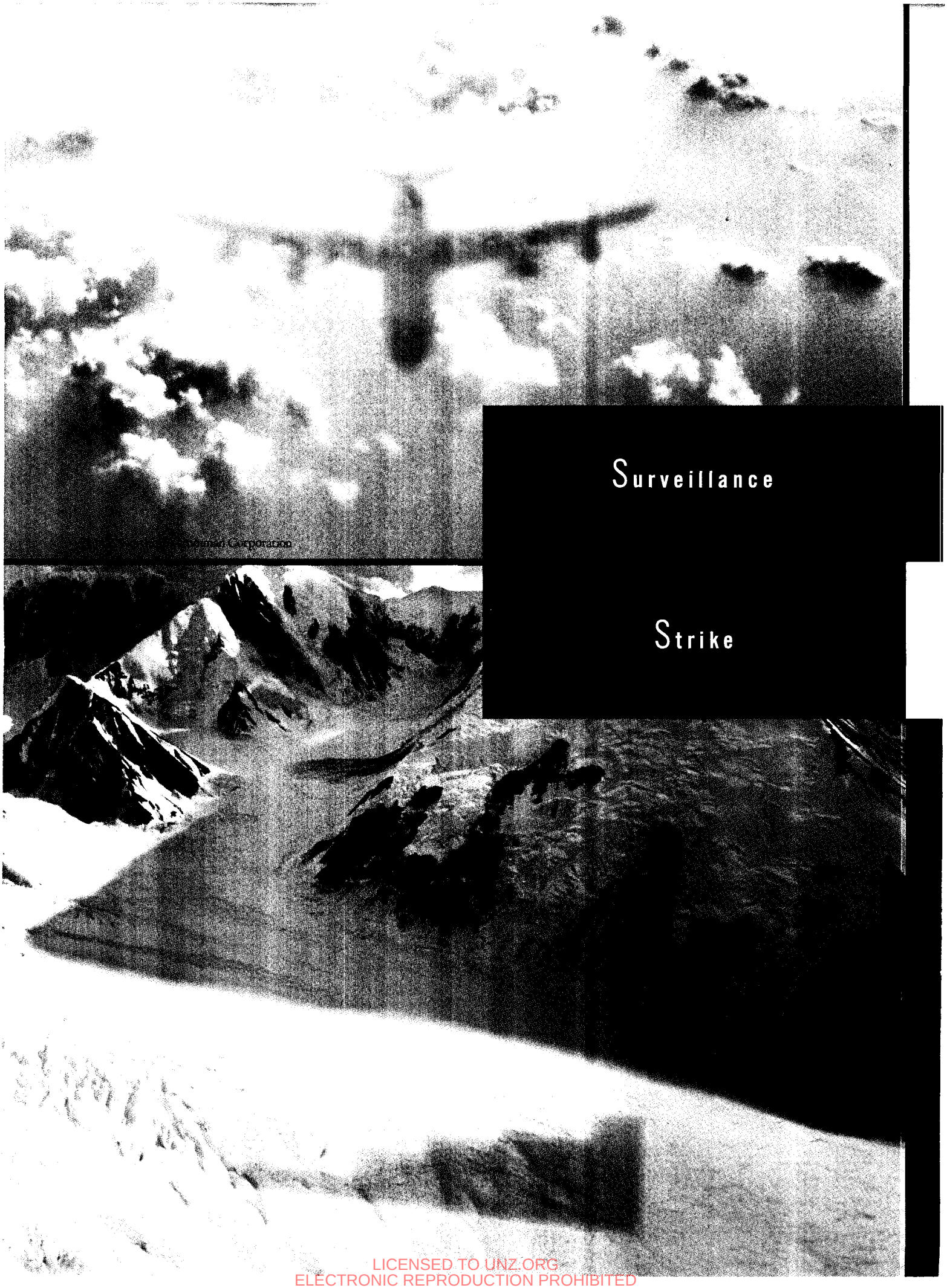

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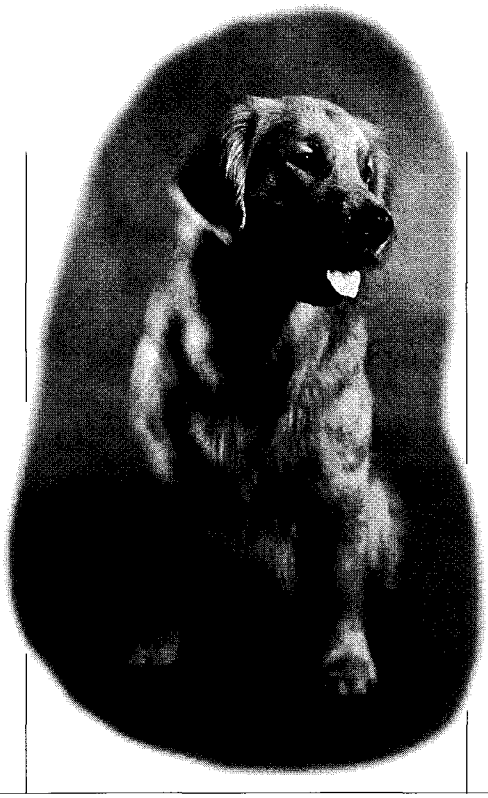
NATIONAL CENTER for FAMILY LITERACY



One in five American adults cannot read well enough to understand this ad.

To these people, newspapers and magazines are more a source of embarrassment than information. Even the thought of reading a simple bedtime story to their kids can be the cause of sleepless nights.

Without basic literacy skills, complicated forms and applications become insurmountable obstacles to them. As a result, their prospects for employment are, sadly, limited.

They are good people in bad situations who, despite the right intentions, are in danger of passing a legacy of lost opportunity down to their children – and to their children's children.

It's a particularly vicious cycle.

In 1989, the National Center for Family Literacy was established with a mission to reverse this national crisis.

Our plan was unique and surprisingly simple. If we could bring undereducated parents back into the school system with their kids, then these parents could increase their prospects in the job market. At the same time, their children would gain a positive educational role model in the home. Push the parents - pull the kids, if you will.

Today, NCFL is behind family literacy programs in more than 1,000 communities, in all 50 states. Around 30,000 parents and children participate in NCFL programs every year.

Family literacy is working. But the crisis is far from over.

To 12 million adults this is an ad about a dog. Actually, it's an ad about literacy.

We urge you to write the National Center for Family Literacy, Waterfront Plaza, Suite 200, 325 West Main Street, Louisville, KY 40202-4251, for information on how you or your company can help support family literacy.

If we, as a nation, can achieve full literacy, then we can achieve anything.

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distress are difficult to quantify, but approached the task by studying awards from other cases; thus as parameters he characterized $150 as an amount indicative of "the threshold level of cognizable emotional distress," and deemed $40,000 as appropriate for blatant racial discrimination.

MR. NYMOEN claimed that the Pfaffs' "insensitivity" caused him to feel as though he was not really a functioning person and left him "emotionally changed." Mrs. Nymoen claimed she was equally traumatized, as were the Nymoen children who, according to her testimony, were confused and could not understand why they had been rejected.

The Judge then ruled that the Nymoen family was so badly shattered by this horrible discriminatory experience that the Pfaffs should pay them $24,000 for their suffering, for a total of $32,000 payable by the Pfaffs. That's about 28.6 percent of the value of the Sudden Valley house, and almost 38 times the monthly rent.

The Judge also ordered the Pfaffs to make quarterly reports to HUD, providing duplicates of every written application, a written synopsis of every oral application, occupancy statistics as to each rental, sample copies of advertisements, a list including addresses, familial status and details of all inquiries from any person regarding the rentals, and a description of any rules, regulations or occupancy standards provided to tenants or other applicants.

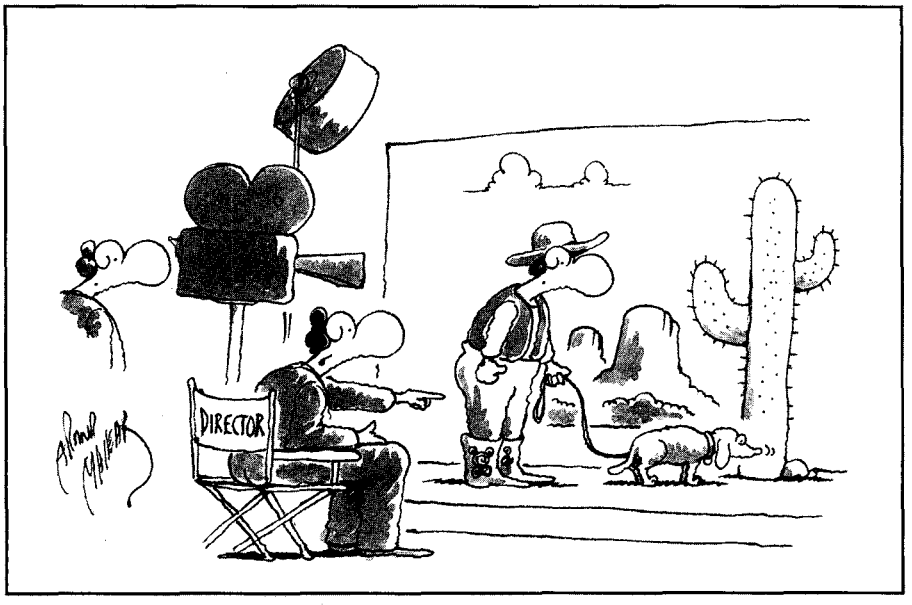
The Judge's order was issued in late October. Under HUD rules, there followed a thirty-day period to allow review of the order by the Housing Secretary. The Pfaffs filed a brief requesting relief from the order, but current HUD Secretary Henry Cisneros took no action, leaving to the Pfaffs the sole remedy of an appeal to the Ninth Circuit Federal Court of Appeals.

In short, the Pfaffs' 1959 "American Dream" has turned into a 1994 nightmare at the hands of their own government.

Taking into account the exhaustive investigation by HUD staff, the efforts of its legal staff, its experts who traveled to testify, the transport and keep for the Judge, the transcription of the record and all the other incidental expenses of this process, the government has to have expended at least $50,000 of the taxpayers' money on this effort against Mr. and Mrs. Pfaff.

The real cost to the public is likely much higher. As Mr. Pfaff testified at trial, if he and his wife were found to have discriminated, they would sell their rental houses. Barring a successful appeal, there is every reasonable expectation that they will do exactly that. The effect will be to diminish the availability of affordable rental housing in the community—the opposite of HUD's reason for existing.

Hollywood should consider this story for a sequel to "Pacific Heights." Congress should consider HUD a prime target for some strategic cuts in funding. What has happened to the Pfaffs is not the American way. □



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WHAT PRICE "SALARY EQUITY?"

LARRY PETERMAN

DAVIS, California, is home to the Davis campus of the University of California (UCD). At first sight, it is the archetype of a sleepy college town. Those entertained by public (and usually comic) acts of liberal self-delusion know better.

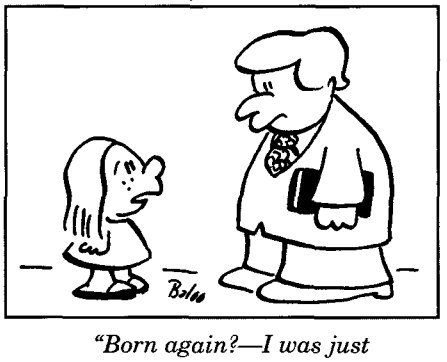
In the past, Davis has achieved dubious notoriety by claiming to be the only town in California that voted for McGovern for President, by housing the UCD Medical School, whose admissions quota system the Supreme Court razed at Alan Bakke's behest, and by arresting a woman for breaking a noise ordinance by snoring loudly—a bit of regulatory overreach celebrated last year in these pages. Now Davis looks to make headlines again as UCD revisits its ground on which it was bloodied in the Bakke episode.

Prodded by a group of faculty women, the UCD Vice-Provost early last year launched a "salary equity" study. As explained at a later date, the study's purpose was to determine whether there were "differences between men's and women's salaries" at the university. The shift in stated objectives, from investigating "salary equity" to looking into "salary differences," was significant. Initially, and as reported in the local press a month before the actual study became available, salary disparities would be understood to be a result of, hence in effect synonymous with, salary inequities. Only when this idea was challenged—differences and equity are not mutually exclusive, logicians insisted—did the "equity" study become a report on "differences."

In practical terms, however, the terminological shift hardly mattered. The university, determined to make "adjustments in rank and step (where) appropriate," had indicated its intentions by arranging for remediation even prior to conducting the study. This disgruntled many in the faculty, but disgruntlement turned to anger when the pay-difference study actually arrived. The focus of faculty opposition was the fact that it was based entirely on gender and length of service, and failed to even try to take into account performance or productivity.

Supporters of the report dismissed this oversight. Less predictably, they began to offer their own startling explanations for salary differences. The report itself, for instance, floats the theory that women "do not negotiate aggressively when they are offered a job." And a law professor and former chairwoman of the Academic Senate Affirmative Action Committee suggested that "women don't even know they could or should ask for more."

At this point, word of the controversy got out and the salary-equity train began to go off the rails. Debra Saunders, a columnist for the *San Francisco Chronicle*, was not only offended by the patronizing notion that women professors are too "dumb" to know what they can ask for, but pointed out that an employer who said that could be sued. And a resolution calling for a new study of faculty salaries was put to the vote of the entire UCD faculty. Unlike the former study, this one would include indexes of performance as well as of gender and length of service. The resolution passed 527 to 503.



"Born again?—I was just born five years ago."

This resolution is currently being challenged on procedural grounds. But regardless of that outcome, the vote is significant. For one, it indicates that there is a limit to what the general faculty—and not just a few outspoken members—will accept in the name of political correctness. For another, it suggests the lines in the next round of university wars.

The ballot arguments in favor of the resolution were written by non-senior but tenured—they aren't crazy, after all—faculty members. Opposing arguments were written by the Chairman of the Academic Senate and by a group of *grandi* (big names) composed of seven male full professors—five of them current or former department chairmen. These *grandi* reflect the establishment view at UCD and consolidate the position of the original Salary Equity Committee, which was made up of ten women and two men.

THE vote to revisit the salary study and consider performance divided UCD in an ironically old-fashioned way: a majority of the faculty against the old boy network, now composed of old boys and new girls. By voting as it did, then, the UCD faculty—both men and, I am confident, women—bid to stymie the ambitions of a new campus establishment and to forestall a revival of the old and rightfully derided system of advancement based simply on longevity and the ability to "get along."

There is evidence that this vote by the UCD faculty in favor of merit considerations coincides with a growing opinion along the same lines outside the academy. Governor Wilson suggested recently that the time is ripe for rolling back some of California's affirmative action legislation, and it is likely that the California Civil Rights Initiative, which has a similar goal, will reach a statewide ballot in 1996.

University *grandi* and their pro-"salary equity" accomplices may be oblivious to such currents, but can not permanently resist them. Indeed, it is possible, mirabile dictu, that they can be shocked into consciousness by a faculty that shows itself unwilling to go along with policies that are outdated and nonsensical to boot. □

Larry Peterman is professor of political science at the University of California, Davis.

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A Right, or Confusion?

DEBUT OF THE LEONARD LAW: A DISSENT

MARK S. PULLIAM

JONATHAN Wilcox praises California's Leonard Law for making possible the legal attack by an individual student against a private Catholic high school for expelling him when he used the word "feminazi" in a student government campaign speech ("Debut of the Leonard Law," *NR West*, December 19). I detest PC as much as anyone, but if the administration of Servite High School in Anaheim insists on acting foolishly in this way, that is its right. The parents and alumni who patronize Servite are entitled to object and withdraw their support. But it is not a proper function of the courts to intervene.

This is a property rights issue. The owners of property have the right to determine the use of their property. This freedom extends to the right of private employers to establish employee rules and regulations, the right of private publications to set editorial policy, and the right of private schools to impose admission and disciplinary standards. As in a dispute between a private landlord and an individual tenant or between a private employer and an individual employee, in a dispute between a private school and an individual student the property owner should prevail, absent a legitimate contractual obligation to the individual.

The rules are different when the rights of individuals are pitted against the government, and for good reason. The government has a monopoly on the use of force and can coerce an individual in a legally meaningful sense. Hence individuals have constitutional rights only against the government—not against other private parties.

Wilcox asserts that "neither the doctrine of the separation of church and state nor a school's right to discipline disruptive students is at issue [in the lawsuit against Servite] . . . . " This is wishful thinking. Giving individuals "constitutional rights" against private property owners and placing the courts in charge of enforcing them will inevitably lead to the further erosion of the autonomy and independence of private schools.

"We were hoping you'd just say 'be fruitful and multiply' again."

The Leonard Law paints with a broad brush. It protects all campus speech and conduct from private regulation to the extent that they are protected from government regulation off-campus by the First Amendment. Under this standard, it is possible that Servite could be prohibited from disciplining a student for uttering sacrilegious or blasphemous, as well as politically incorrect statements. Do we really want judges overruling private school administrators on such questions?

AS OUR culture and legal system come under increasing attack from the political Left, it is critically important that we maintain a coherent understanding of constitutional rights and obligations. The starting place is the distinction between the private and public sectors. As Reagan Administration Solicitor General Charles Fried writes in *Order and Law*: "[F]reedom of speech is thought to be protected when private institutions are free to control the speech for which they are responsible. This is a profoundly liberal view of the First Amendment, and it distresses communitarians on the Left as well as the Right. . . . If the welfare-bureaucratic state's various involvements in private institutions became a basis for subjecting those institutions to the same constitutional provisions as bear on the state, the way would be open to impose on every institution in the country the same leveling and intrusive regimes as are now imposed (often quite properly) on the government alone. And the way would be open as well to regulate the private sector not by legislation alone. . . but by ideologically aggressive lawyers and a creative judiciary."

Despite its goal, the Leonard Law is misguided. Conservatives will come to rue their support of it. What goes around, comes around. □

Mark S. Pulliam is an attorney in San Diego.

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Pro-Victims' Rights, With a Twist

FOR those who don't recall, in 1988, my friend Pat Nolan was leader of the California Assembly Republican Caucus, five seats away from toppling Speaker Willie Brown. Then news broke that he was the victim of an FBI sting.

Fake officials of a phony company had lobbied for a bill to reduce bonding requirements for businesses that hired poor minority workers. Nolan voted for the bill, in keeping with his well known opposition to regulatory burdens on private businesses. After the vote, and following several attempts by the fake officials to set up a meeting, Nolan was handed an envelope containing two $5000 checks. (Corporate contributions are legal in state races in California.) The "payee" line on one check was left blank, so Nolan's staff filled in the name of his fund for GOP assembly candidates.

Nearly five years after the FBI announced that Nolan was under investigation (which forced him to resign his leadership position), the U.S. Attorney finally pressed charges. A total of six counts were leveled against him, adding up to a possible 20 years in prison. Rather than chancing this, Nolan pled guilty last year to one charge and is now serving a 33-month term. He took this step for the sake of his three pre-school age children and because he faced a stacked legal deck.

The Nolan saga remains important, not only to his friends, but to all Americans who are properly leery of government power. Let us consider the three types of charges brought against Nolan: extortion, money laundering, and racketeering.

The extortion charges rested on the alleged solicitation of political contributions in exchange for votes. But since the contributions in question were proffered after the vote in question, the FBI spent five years pouring over Nolan's appointment books and interviewing contributors to try to make its case that anyone was asked for money in exchange for votes.

Two points about this. One, as leader of the Assembly Republican Caucus, it fell to Nolan to raise money for assembly candidates. Yet after five years of interviews, the FBI found only three contributors who suggested that they even "had the impression" that any of the 7000 pieces of legislation reviewed annually by the legislature was discussed during Nolan's solicitation. And two: The U.S. Court of Appeals has created something called "impression testimony," whereby testimony that a donor "had the impression" that legislation was discussed is admissible in court and can be used as the sole basis of conviction.

The second type of charge brought against Nolan was money laundering—an attempt to hide funds derived from illicit conduct by depositing them into a financial institution. Had he cashed the FBI checks and spent the money personally, Nolan would have been immune to this charge. But since he assumed they were legitimate contributions to his assembly candidates' fund, his staff deposited them in the fund's account and reported the gift to the appropriate state agency. Ironically, this fact was used to add one to two years to Nolan's possible sentence.

"His last words were . . . 'Sue the tobacco companies!'"

The third set of charges against Nolan came under the Racketeering Influence and Corrupt Organization statutes, better known as RICO. The government can invoke these if a citizen is charged with more than one crime. They were developed in the 1960s to deal with organized crime, but are now used in a variety of unintended cases. RICO is the government's way of piling on with the threat of increased punishment. As former Attorney General Ed Meese said in a recent speech, "RICO is often abused and misused against ordinary people charged with crime, who have never been a part of any organized criminal syndicate, but rather merely as a lever to get them to plead guilty."

ON TOP of all this, during the course of its five-year investigation, the FBI regularly leaked information on the Nolan case to the *Sacramento Bee*'s political columnist, Dan Walters, who dutifully passed it on to the potential Nolan jury pool. (A request by Nolan's lawyers for a change of venue from Sacramento to San Francisco was denied.) Meanwhile, despite a concerted effort by Nolan and his supporters, the *Bee* did not publish a single column or even letter to the editor that defended Nolan against the FBI–Walters assault. (As further evidence of the political cast to this case, within minutes of his lawyer negotiating his plea with the U.S. Attorney, Nolan received a phone call from a legislator who knew all of the plea's details. He had been told by Assembly Speaker Willie Brown, Nolan's chief political opponent.)

These were the circumstances behind a good man pleading guilty to a charge of which he was innocent. They should give conservatives pause, despite our long-standing support of a strict criminal justice system in general and of the FBI in particular. As Pat Nolan approaches his first year apart from his young family, it is time for a national debate over the need to re-erect safeguards against the unleashing of the full power of the federal government on law-abiding Americans—even our politicians.

—JOHN VON KANNON

John Von Kannon is Vice President of The Heritage Foundation.

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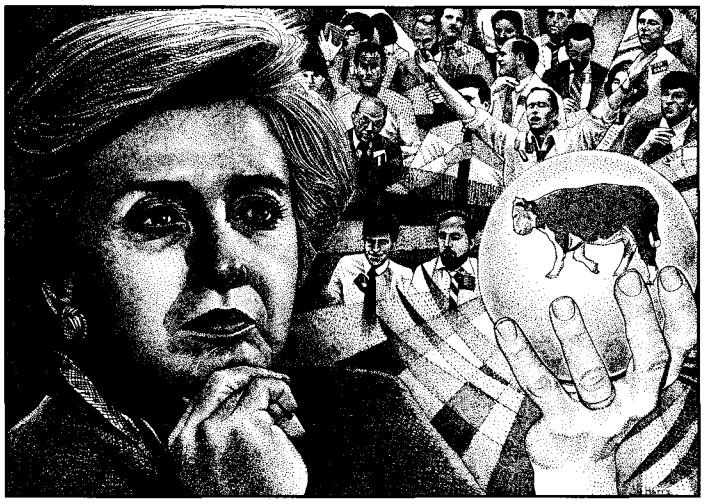

Hillary's Investment Profits

HERD INSTINCTS

Is Hillary Clinton a better commodities trader than George Soros, or did she just get really, really lucky? Both explanations leave something to be desired.

CAROLINE BAUM & VICTOR NIEDERHOFFER

WHEN Newt Gingrich told a Republican audience recently that his lucrative book deal paled in comparison with Hillary Clinton's cattle-trading profits, the Speaker's comments were greeted with wild applause and raucous laughter. Opened to public scrutiny less than a year ago, Mrs. Clinton's one-hundred-fold return from trading futures has already become part of popular lore. Whenever anyone is suspected of making a fast buck nowadays, the First Lady's adventure in commodities trading is bound to come to mind.

On October 11, 1978, the future First Lady, a neophyte investor with an annual income of $25,000, opened a commodity-futures account with a deposit of $1,000. Her first trade was the short sale of ten live-cattle contracts at a price of 57.55 cents a pound: a commitment to deliver in December of that year 400,000 pounds of cattle with a market value of $230,200. One day later, she bought the contracts back at a price of 56.10 cents, just 0.15 cent above the low of the day, pocketing $5,300 for a return of 530 per cent.

Mrs. Clinton continued to be a net winner at the game. By the time she closed her trading account ten months later, she had racked up $99,541 in profits, a spectacular 10,000 per cent return on her initial investment of $1,000. Either Mrs. Clinton was a better trader than the legendary George Soros, whose best-ever annual return in thirty years of trading was 122 per cent, or she was led by an invisible hand.

During a press conference last April, the First Lady attributed her success to her advisor James Blair's "theory that because of the economy in the early part of the 1970s, a lot of cattle herds had been liquidated, so that there was going to be a big opportunity to make money in the late Seventies." After examining Mrs. Clinton's trading records, Leo Melamed, the father of financial futures and former chairman of the Chicago Mercantile Exchange, and Jack Sandner, the Merc's current chairman, found nothing irregular except, on occasion, insufficient margin in her account. Anyone could have done as well, these gentlemen said, given the doubling of cattle prices during her year of trading. Mr. Melamed called the brouhaha over the First Lady's financial affairs "a tempest in a teapot." Mr. Sandner attributed her success to her "trading the biggest bull market in the history of cattle. If someone caught that trend and traded it well, they could make an extraordinary amount of money, a lot more than $100,000, on a small investment."

Yet Mrs. Clinton *bucked* the trend and traded it well. Most of her trades, including her first two, her last two, and her single most profitable trade (in dollar terms) were initiated from the short side, anticipating a *decline* in cattle prices. Short selling by the public is extremely rare, especially on a first trade. When one considers that both the investor and her trading advisor were using a herd-reduction theory to capitalize on the biggest bull market in cattle in history, the success of her short sales raises a bright red flag.

In other situations where the legitimacy of a transaction is suspect, the courts are guided by the common-law doctrine, enunciated by Supreme Court Justice Antonin Scalia in the 1994 case *BFP* v. *Resolution Trust Corporation*, that "a transfer of title for a grossly inadequate (or in some cases grossly excessive) consideration would raise a rebuttable presumption of actual fraudulent intent." Except for a press conference or two attended by sympathetic journalists not familiar with commodities trading, the First Lady has done nothing to rebut that presumption.

In Search of Slime

CASES of fraud are notoriously hard to prove. In the investigation of a suspected fraud, the prosecutor does not expect to uncover a document outlining the terms of an illicit financial transfer between two parties. Similarly, an insurance investigator does not expect to find an arsonist standing on the fire-ravaged premises with match and empty gasoline can in hand.

But the clues are there. Despite their best efforts, perpetrators of fraud usually leave a slimy trail—what fraud investigators refer to as badges or indicia. As the Tennessee Supreme Court put it in the 1835 case *Floyd* v. *Goodwin*, "Fraud has to be ferreted out by carefully following its marks and signs, for fraud will in most instances, though ever so artfully and secretly contrived, like the snail in its passage, leave its slime by which it may be traced."

Insurance investigators have an ob-

Caroline Baum is a financial columnist with Dow Jones Telerate. Victor Niederhoffer is a commodities speculator. *The authors wish to thank Jay McKeage and Jon Normile for their assistance.*

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jective list of marks and signs that they look for when a presumption of fraud exists. In cases where arson is suspected, one of the first questions a fire investigator tries to answer is: Was the pet removed from the premises? Medical fraud might be indicated when the medical bills in question are photocopies, or if they fail to itemize office visits and treatments. In cases of automobile-accident fraud, one marker would be a claimant's attempt to discourage an insurance investigator from looking at the damaged vehicle.

As far as we know, there are no indicia for commodities-trading fraud. So we took it upon ourselves to develop a checklist of fraud indicators that would apply to a broad range of financial trickery. We are confident that any investment activity that scores high on our test merits a red flag. We have rated the likely legitimacy of Mrs. Clinton's activities on a scale ranging from 1 (highly likely) to 10 (highly unlikely) for each of ten criteria.

1. Were the returns excessive as measured against a normal yardstick of performance? Yes. As discussed above, Mrs. Clinton's annual return was more than eighty times George Soros's in his best year. As far as we know, no non-professional has ever achieved a return of that magnitude. Stanley Kroll, a well-known commodities broker who worked at three major firms at that time, has written that none of his retail customers turned a profit. Neither did those of any of his colleagues at other firms. Even Mrs. Clinton's trading advisor, Jim Blair, who says he was "damn good" at making money in commodities, declared bankruptcy with a $15-million trading loss shortly after his pupil stopped trading. *Score: 10 points.*

2. Has there been any effort to suppress investigation of the transaction? Yes. Mrs. Clinton was adamantly opposed to the appointment of a special prosecutor to look into her and her husband's financial dealings, including her own trading activities, during the late 1970s and 1980s. She attempted to deflect attention from the matter by explaining away her newfound wealth as a gift from her parents, until the Clintons' 1978 and 1979 tax returns were made public and the actual source of her windfall profit was revealed. Furthermore, despite our repeated and friendly requests to both the First Lady's and the White House's press representatives, none of our questions concerning the elementary details of Mrs. Clinton's trades and the availability of original documentation has been answered. *Score: 10 points.*

3. Are crucial records of the transaction missing or available only in duplicate form? Yes. The purchase and sale confirmations for Mrs. Clinton's two most profitable trades are lost or missing. Her first, extraordinary transaction is also among the missing. The details were furnished by the Chicago Mercantile Exchange. Mrs. Clinton has no independent recollection of her first trade, which produced a 530 per cent return overnight. You can be sure that Fernando Valenzuela hasn't forgotten the five shutouts in his first seven games as a rookie pitcher for the Los Angeles Dodgers in 1981. *Score: 10 points.*

4. Did the suspect alter his story regarding the activity in question? Yes. The White House furnished ever-changing versions of Mrs. Clinton's trading activities. First, we were told she did her own research, relying primarily on the *Wall Street Journal*, and placed all of her own trades. Then mentor James Blair played an advisory role, but she made the decisions, determined the size, and placed all the trades. As it now stands, she relied on Blair's advice, and he placed most of her trades. When queried, the First Lady said the confusion was the result of the way the story was communicated to the press. *Score: 10 points.*

5. Were a good portion of the purchases and sales executed near the most favorable prices of the day? Yes. As noted, Mrs. Clinton's first trade of ten live-cattle contracts (sold short) was followed by a purchase at a price just 0.15 cent above the day's low. The odds of a retail trader buying at a price 15 points off the intraday low on a ten-contract trade are about the same as those of finding the Dead Sea Scrolls on the steps of the State House in Little Rock.

Many of Mrs. Clinton's subsequent transactions were executed near the day's extremes, including her last big trade in July 1979. At a time when her account was $18,000 under water, she managed to sell fifty live-cattle contracts 0.12 cent from the high on a day when prices dropped by the 1.5-cent limit. Her very last trade was a purchase of fifty cattle contracts just 0.05 cent above the low of the day. Such precision trading would be enviable for a trader who spends every second of the trading day glued to the screen. It is a dazzling coup for a non-professional like Mrs. Clinton, who had many other claims on her time, such as litigating for the Rose Law Firm, serving on corporate boards, crusading for children's rights, chairing the Legal Services Corporation, and performing various duties as the governor's wife. Until Hillary's diaries and Rose's time sheets become public and reveal her whereabouts between the opening and closing of the cattle pit each day she traded, we cannot award her a perfect score. *Score: 8 points.*

6. Was there anything unusual about the suspect's behavior or anything irregular about the activity in question? Yes. As mentioned earlier, Mrs. Clinton, a neophyte investor with nearly no savings, traded the biggest bull market in the history of cattle primarily from the short side. Her first three transactions were short sales. The irregularities connected with her first trade alone should have tripped the security system. The commission of $500 and bid–asked spread of around $600 on such a trade came to more than her entire initial equity of $1,000. So from the moment she entered her first transaction she had already lost more than she could afford to lose. Unlike that of most traders, Hillary's trading activity re-

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veals no discernible pattern. She bought and sold everything from one and two lots to sixty contracts at a time. In her waning days as a speculator, she day-traded fifty contracts at a time when she already had an open position of 65 contracts. *Score: 10+ points.*

7. Was the risk in the trading program inconsistent with the customer's net income and net worth? Yes. Mrs. Clinton's 1978 earned income of $24,250 from the Rose Law Firm partnership and husband Bill's $26,500 as Arkansas attorney general are considerably lower than the minimums set by most brokerage houses for opening a commodities-trading account. If for some reason Mrs. Clinton had lost rather than won $100,000, where would she have come up with the money?

On three separate occasions (in November 1978, December 1978, and July 1979), the value of Mrs. Clinton's open positions was well in excess of $1 million for days at a time, and in two cases for up to three weeks. A 2 to 5 per cent move—the sort of move that occurs about once every two weeks—in the wrong direction would have wiped out not only the Clintons' net income for the year but also their entire net worth. Their joint political aspirations would have gone up in smoke if the governor-elect had been forced to declare personal bankruptcy as a result of his wife's speculations in commodities futures. *Score: 10 points.*

8. Was the suspect in a position to do a favor for any of the other parties involved? Yes. Hillary's advisor, James Blair, was not only a family friend, but also counsel of Tyson Foods, the largest chicken processor in the world and Arkansas's biggest employer. According to a 1994 article in *The New York Times Magazine*, the company's chairman, Don Tyson, viewed "politics as a series of unsentimental transactions between those who need votes and those who have money . . . a world where every quid has its quo." Clearly Tyson had money, and he put it on Bill Clinton in 1978. In return, as reported in *The New York Times Magazine*, he expected the new governor to raise the legal truck-weight limit in Arkansas so that Tyson Foods could compete with out-of-state poultry truckers.

Blair may also have been balancing an item in his own account. In the early months of the Carter Administration, Bill Clinton coordinated federal patronage in Arkansas, and one of his first moves in this area was to recommend Blair for the chairmanship of the Federal Home Loan Bank Board.

Long Odds

HOW likely is it that a novice investor in the commodities market would earn a 100-fold return on an initial investment of $1,000? To get some idea, we used daily price quotations from the *Wall Street Journal* for the period when Hillary Clinton was trading and employed commonly accepted statistical procedures.

For our purposes, we assume that the investor purchases one contract at a time and removes the profits at the end of each day. Although Mrs. Clinton's trades do not follow this pattern, we are trying to estimate the odds for a typical small-time investor.

During the period in question, there were 202 trading days, and on most days contracts with ten different delivery dates were available. Each contract is for 40,000 pounds of choice-grade steers. The minimum price fluctuation is 2.5 cents per hundred pounds, which equals $10 per tick. The maximum daily price movement allowed by the Chicago Mercantile Exchange is 1.5 cents a pound, or $600 per contract. The margin per contract is $1,200.

Closing prices on October 10, 1978, ranged from 56.32 cents on the nearby contract to 61.15 cents on the June-delivery contract. On July 31, 1979, when Mrs. Clinton exited the market, prices ranged from 58.9 cents on October delivery to 66.5 cents on the far December contract. The mean daily return for mid-range contracts during this period was .001; the standard deviation was .242.

Considering each day as an independent event, it would require an average daily profit of $492.78 ($99,541 divided by 202) for an initial position of one contract to result in an ending profit of $99,541 after 202 days. A $492.78 daily profit corresponds to a 1.23-cent move in the contract's price, 82 per cent of the 1.5-cent maximum change allowed by the Exchange per day. Such swings are unusual: during the period of October 11, 1978, through July 31, 1979, there were only eighty days on which any contracts experienced moves of between 1.23 and 1.5 cents.

Ex ante, the probability of making money on a given trade is .5 (the probability of being long and being right plus the probability of being short and being right). Multiplying this by the standard deviation for returns on mid-range contracts (.242) yields a weighted standard deviation of .121. Our z statistic is the difference between the target return (.49278) and the mean return on mid-range contracts (.001), divided by the weighted standard deviation. This yields a z of 4.064, which implies a probability of .000024, or 24 chances in a million of attaining such returns.

But a person has the choice of being in or out of the market. We assume the average novice futures trader has a .5 probability of being invested in the market on a particular day. (Based upon the experience one of us has had as a commodities broker, retail speculators are more likely to be out of the market than in, so this estimate is conservative.) Reducing the standard deviation to take account of the possibility that the investor is out of the market on a given day yields a z statistic of 5.75, which corresponds to a probability of 4 in 1 billion. Since there were only eighty days when a return equal to or greater than $492.78 was possible, the odds are actually even lower.

—SETH C. ANDERSON
JOHN D. JACKSON
JEFFREY W. STEAGALL

Mr. Anderson is an associate professor of finance at the University of North Florida. Mr. Jackson is a professor of economics at Auburn University. Mr. Steagall is an assistant professor of economics at the University of North Florida. This article is based on a paper that appears in the Fall 1994 issue of the Journal of Economics and Finance.

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In *Keys to Crookdom*, written in 1924, George C. Henderson comments: "The great grafter does not buy government officials after they are elected, as a rule. He owns them beforehand." And, in a prescient conclusion: "Occasionally good and faithful servants are rewarded by attorneys' fat fees, gifts and market tips in addition to emoluments of the office." *Score: 10 points.*

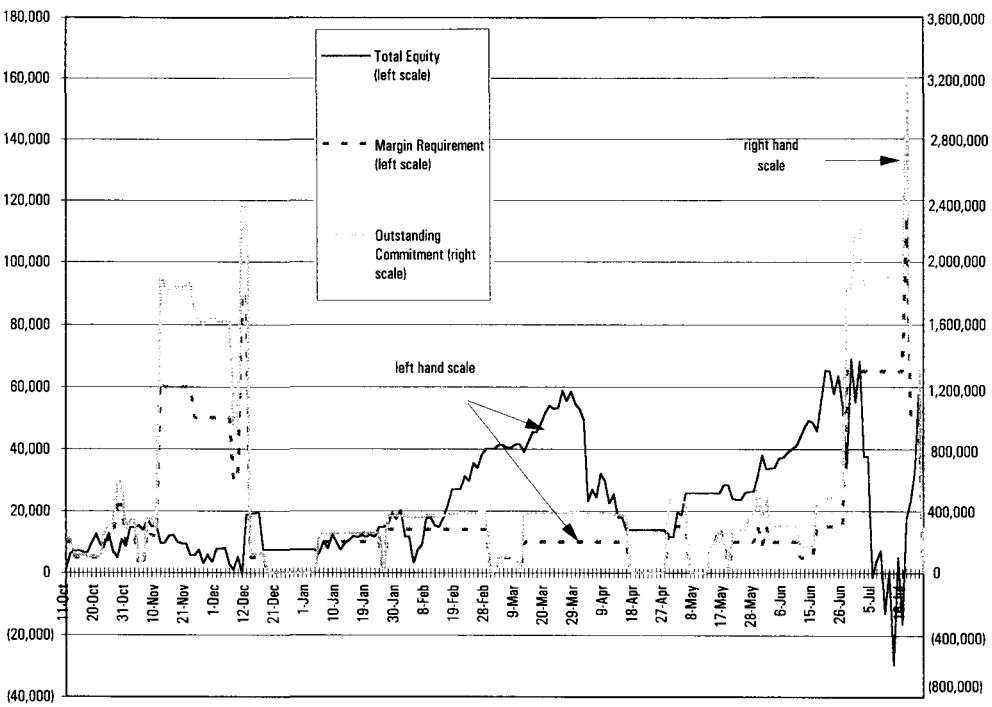
9. Was there any history of illegal, irregular, or unethical behavior on the part of the broker? Yes. Red Bone, the broker of record for both Mr. Blair and Mrs. Clinton, was suspended from trading for a year, even before he left Tyson Foods to run the Refco brokerage office in Springdale, Arkansas, for trying to corner the egg-futures market. In 1979, Red was disciplined by the Chicago Mercantile Exchange for "serious and repeated violations of record-keeping functions, order-entry procedures, margin requirements, and hedge procedures." Refco was fined $250,000, at the time the largest fine ever levied for commodity-trading violations.

One of Refco's Springdale brokers at the time has admitted under oath that the firm was buying and selling blocks of contracts and allocating them to customers after the market closed. In one instance, after being chastised by their superiors in Refco's Chicago headquarters, the brokers had to set back the time-stamp clock before stamping the day's trades to give the appearance that account allocations had been properly made. *Score: 10 points.*

10. Were rules, regulations, and normal operating procedures violated? Yes. Mrs. Clinton insists that despite the advice she received from James Blair, she maintained a non-discretionary account. Any non-broker who places an order for a customer is, by definition, acting in a discretionary capacity and must file the appropriate documents. And in view of Mrs. Clinton's busy schedule and the precision timing of many of her trades, it is likely that Mr. Blair placed the orders without consulting with her. Yet no discretionary forms were ever filed. Finally, it is inconceivable that a prudent broker would assume all of the risk exposure for a client who did not have the funds to support her positions without a third-party guarantee. *Score: 10 points.*

Hillary's total score on our financial hanky-panky scale is 98 out of 100, catapulting her to the top of the class for potential commodities fraud. A detailed examination of her trades seemed in order. We started with records of each purchase and sale confirmation and all of the monthly statements that were provided by the White House. Next we looked at the high, low, open, and close on each of these days to see how her fills compared to what was available. Finally, we calculated the unrealized gains, required margin, available equity, and commitments outstanding for each day during Mrs. Clinton's ten months of trading.

Hillary Clinton's Trading Account, 1978 to 1979



Favorable Treatment?

BACKED up by legions of data, we were prepared to rebut the First Lady's contention that "there isn't any evidence that anybody gave me any favorable treatment." Our analysis of the data and other documents yielded these observations:

1. Mrs. Clinton's account was undermargined by $50,000 to $80,000 during a one-month period beginning November 10, 1978. Again in July 1979, her margin requirements were approximately $100,000 for several days, when there was negative equity (minus $30,000) in the account. A normal rule of thumb for commodity traders is to maintain equity of at least five times the margin requirement. Mrs. Clinton routinely reversed this ratio, maintaining equity around one-fifth of her required margin.

2. Her total equity would have been wiped out on three occasions, taking into account the commissions due and the cost of exiting the trades. On July 17, the commissions and bid–asked spreads on newly opened positions, added to her existing deficit going into the day, could have totally wiped out the family's net worth, even without any market move against her.

3. Her name was misspelled "Hilary" on all the official brokerage statements she produced, raising the question of whether the statements were ever mailed to the detail-oriented attorney.

4. Her first two monthly statements reveal identical misalignments and faulty keystrokes on certain letters, raising doubts as to their authenticity. It wouldn't take a great stretch of the imagination to conclude that they were generated simultaneously in an effort to cover the slimy trail.

5. Withdrawals from her account consistently kept her equity below $15,000. After each big win, she withdrew the spoils. Finally, after making about $100,000 in four days in July 1979, she closed her account down. Such behavior is

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A Message from Negative Population Growth, Inc.

Why We Must Reduce Immigration From Over One Million to 100,000 a Year

It Makes No Sense for Our Nation to Permit Massive Immigration

We now allow over one million immigrants to settle here every year. If our fertility rate remains at 2.0, continuing immigration at that level would swell our population to nearly 500 million before the end of the next century. **That would almost double our present size!**

Such growth would be intolerable. It would destroy our environment, our standard of living and the quality of our lives.

With a present population of 262 million, our country is already vastly overpopulated in terms of the long range carrying capacity of its resources and environment. Yet we continue to grow rapidly, by 25 to 30 million each decade.

We Need to Halt and Then Reverse Our Population Growth

We at NPG believe that our goal should be to stabilize our U.S. population at no more than 150 million, its size back in 1950. We consider that to be the optimum size for our country.

We Americans do not have to agree now on the exact size of a smaller population, however, since any substantial reduction in numbers would take many decades to achieve. It is only essential that we agree on the urgent need to halt and reverse our population growth.

Immigration Must Be Drastically Reduced

Because we have allowed our nation to become seriously overpopulated we are in deep trouble. A quick and easy solution simply does not exist. To start on the path toward a smaller, more sustainable population, we must halt illegal immigration and sharply reduce legal immigration.

Accordingly, NPG strongly recommends that legal immigration be cut back from its present 900,000 per year to no more than 100,000, including all relatives, refugees and asylees. We further call for an all-out effort to reduce illegal immigration, currently estimated at 300,000 a year, to as near zero as possible.

Best Case Scenario: Low Fertility, Low Immigration

What would happen to our population if our fertility rate were gradually reduced from the present 2.0 to 1.5 by 2050, if illegal immigration were virtually halted, and if legal immigration were reduced in 1996 from the present 900,000 a year to 100,000 a year, as we advocate?

The bad news is that our population would still continue growing for another 25 years, peaking at 300 million in 2020. **The good news** is that by the end of the next century it would have declined to around 180 million. In a few more years it would reach 150 million and could be stabilized at that level, even allowing a slight increase in fertility and/or immigration.

This is the path to a smaller population that NPG advocates.

Another Scenario: Low Fertility, High Immigration

If our fertility were reduced as in the "best case" scenario, but immigration remained at its present high level, the picture would be far worse.

1. Our population would continue growing for another 55 years, peaking in 2050 at 337 million, **75 million more than we are now.** Our impact on the environment would accordingly be that much greater.

2. Even by the end of the next century, our population would still be 298 million, 36 million greater than it is today, **and 121 million larger than it would be under the "best case" low immigration scenario.**

This is a path that our nation cannot afford to follow. **Clearly, the level of immigration will have a tremendous influence on the eventual size of our population.**

We Cannot Rely on Fertility Decline Alone to Reverse Our Population Growth

Fertility rates are difficult to change and when they do change, they almost always do so very slowly. Furthermore, future fertility rates are unpredictable: they might well increase rather than decrease. Over the last 18 years, for example, the trend has been upward, from a low of 1.7 in 1976 to 2.0 in the last few years.

That is all the more reason why we must reduce immigration to a level consistent with our long-term national interest. Reducing immigration is a much faster and more certain way to get results than relying on fertility decline.

If we can persuade our government to act decisively **NOW** to halt illegal immigration — and to cut legal immigration from 900,000 to 100,000 a year — **we will at last be doing something** to brake runaway population growth in our country.

If you believe with us that immigration must be drastically curbed — and without further delay — then we ask you to work for this goal as a member of Negative Population Growth. We need your help.

NPG is a nonprofit, national membership organization established in 1972. Contributions to NPG are tax deductible to the extent the law allows.

Yes, I want to become a member of NPG, and help you work towards a smaller U.S. population. I am enclosing my check for annual membership dues.

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inconsistent with human nature, as observed any day in Las Vegas or Atlantic City, as well as with Mrs. Clinton's insistence that she reinvested her profits.

6. Two-thirds of her trades showed a profit by the close of the day she entered them, and 80 per cent of her trades, on both the long and the short sides, were ultimately profitable, percentages that are rarely achieved by the most successful professionals.

7. Commissions and slippage of her trades totaled more than 37 times her initial equity.

8. Most of her 33 trades were for five or ten lots. But on three occasions Mrs. Clinton traded fifty or sixty contracts, positions that would normally require about $1 million in equity to support. Each of these trades was entered at extraordinarily favorable levels relative to the price range of the day and was highly profitable by day's end. On two of the large trades the overnight profits pushed a negative equity into the black. Had Mrs. Clinton lost on any of the large trades, the implications for her "investment program" would have been dire.

9. For a two-week period in July 1979, the equity in her account swung from negative $31,000 to positive $62,000. Finally, after the purchase of fifty contracts just a gnat's eyelash above the low of the day, the account was closed with a withdrawal of $60,000, bringing total withdrawals to more than $99,000. Mrs. Clinton was allowed to trade like a millionaire, in the process violating numerous rules and procedures that industry professionals have developed to prevent financial catastrophe to customer and brokerage house alike.

10. More egregious than any of these other red flags of commodity-trading fraud was the size of Mrs. Clinton's commitments. From day one, the size of her positions was wildly out of line with the equity available to absorb loss. On November 13, 1978, with $13,000 in her account, she controlled a position of 62 contracts with an underlying market value of $1.9 million. On December 11, 1978, she had $6,000 in her account and a ninety-contract position valued at $2.3 million. And on her third to last day of trading, July 17, 1979, she had 115 contracts outstanding with a market value of $3.2 million. The equity in her account was a negative $18,000.

The fluctuations in the price of Hillary's cattle commitments taken in 1978 and 1979 averaged 1 per cent a day from close to close and 2 per cent from high to low. On unusual days, once or twice a month, cattle prices fluctuate by 4 or 5 per cent. All commodity traders know that they must be sufficiently liquid to withstand such extreme swings and avoid financial ruin. One 4 or 5 per cent adverse fluctuation in Mrs. Clinton's position would have constituted five times her annual income and five times her net worth. And this is just a one-day move. Commodities have a nasty habit of moving against you for several days in a row, right to the point where you are forced to liquidate. But whenever Mrs. Clinton was on the brink of ruin, she managed to pull a rabbit out of a hat.

The outlook was not bright for her in the middle of July 1979. The total equity in her account was a negative $31,245. She owed $65,000 in margin requirement. On July 17, she doubled up, selling fifty more contracts just 0.12 cent off the day's high of 68.72, and covering it that same day for a profit of $10,400. At the time, her required margin was $115,000 and her total cash due to the broker was $135,000. Most speculators know that doubling up when one's position is seriously under water is a one-way ticket to ruin. Only if she had held a confirmed, round-trip ticket would someone in Mrs. Clinton's position have been willing to risk the farm in such a high-stakes game. Providentially, three days later, on her last day of trading, the whole situation was resolved. Cattle closed down the limit again, and Mrs. Clinton covered her short position down by just 0.05 cent above the limit. She ended her career as a speculator with a final flourish to rival her first trade.

After extensive research, we have satisfied ourselves that Mrs. Clinton was neither naïve nor lucky nor particularly talented as a trader. Even individuals who have never visited a futures exchange or traded one futures contract will, upon examination of the evidence, be convinced that Mrs. Clinton's representation of the events 15 years later is highly implausible.

After a concerted attempt to follow the path and uncover the truth, we are still left with one gnawing question. Hillary Clinton earned profits of $99,541. What happened to the other $459? □

Politics over Public Health?

BLOOD SIMPLE

In blocking access to a new blood-testing kit, the FDA is making a fatal mistake.

AMITAI ETZIONI

GAY ACTIVISTS were discomfited when Newt Gingrich extended a helping hand to people at risk from AIDS, writing to White House Chief of Staff Leon Panetta to complain that they are prevented from using the HIV Home Collection Kit. The kit allows people to find out whether they are HIV-infected by mailing in some blood on number-coded cards and calling anonymously for the results. Paul Weyrich, national chairman of the Coalition for America, also urged that the Food and Drug Administration approve the kit. He said he feels "uncomfortable" discussing the subject because "of the manner in which this deadly disease can be contracted," but he went on: "This has clearly become a public-health issue affecting millions of Americans, some of whom are innocent victims of this

Mr. Etzioni is University Professor at the George Washington University and author of The Spirit of Community.

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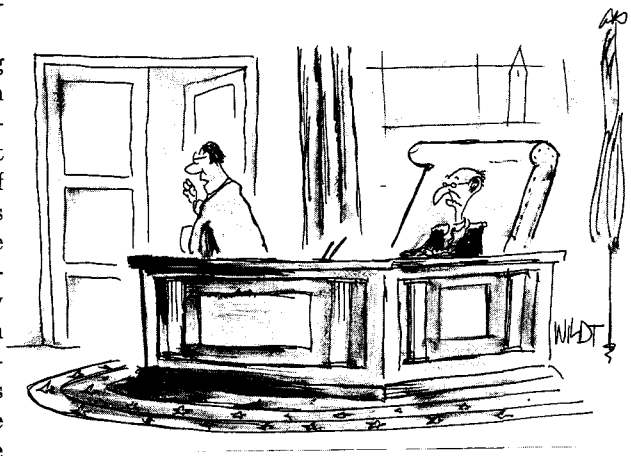
deadly virus." And William H. Mellor III, president of the libertarian Institute for Justice, threatened to bring a lawsuit to force the FDA to act. Gingrich, Weyrich, and Mellor were joined at a December press conference by a young woman infected by HIV who explained that her doctor had discouraged her from being tested. Had the kit been available, she would have known her status sooner and avoided the risk of transmitting the virus.

The FDA has been blocking access to the HIV kit for seven years. When I first became involved in trying to get the kit approved, I was skeptical of complaints about the FDA's hostility to business, excessive bureaucracy, and so on. I considered the FDA one of the few government agencies with a good track record. Though excessively cautious, it saved us from calamities such as the birth defects caused by the sedative Thalidomide in Europe during the early 1960s. I began to realize that the FDA is often driven by considerations less wholesome than public health when I read that it had refused to approve the Sensor Pad, a simple device that aids the detection of breast cancer, without any clear explanation. The FDA's treatment of the HIV Home Collection Kit completed my conversion.

I came to support the kit not in the interest of market efficiency but out of moral concerns. Examining the balance between the common good and individual rights, I argued that anyone who is HIV-infected—whether that person got the disease from a blood transfusion, intercourse with a spouse, shared hypodermic needles, or unconventional sexual activity—has a moral responsibility to inform others. No cure or vaccine for HIV is in sight, and the only way to prevent the horrible disease from spreading is for those who are carriers to notify all previous contacts that they must change their behavior and warn all prospective contacts of the danger. This requires that people who are likely to be infected get tested. The kit helps them discharge their moral obligations.

Several gay leaders have come up with a plethora of reasons why they are not so obligated. They argue that there is an incubation period during which the HIV antibody does not appear, and so infected people can test negative. Consequently, people



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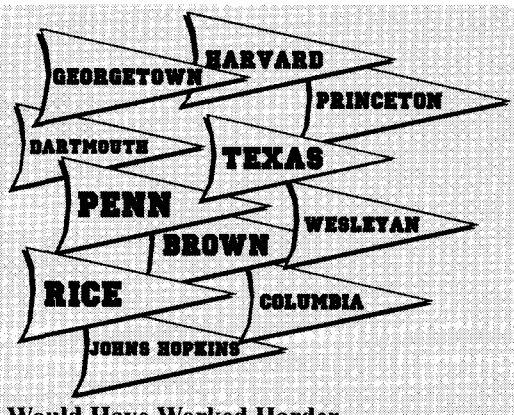

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should always act as if everyone were infected. But this is like saying that because you are always told to fasten your seat belt, a pilot need not warn you when the airplane is about to make a forced landing. People do not always act wisely and, as the Bible says, you should not place a stumbling block in front of a blind person. When you see a fellow human being approaching a fatal trap, warning him is one's basic responsibility.

Enter the HIV Home Collection Kit. It is radically different from most things the FDA reviews. It is not a drug whose chemical attributes and effects citizens have a hard time grasping; it is not a complex compound whose safety must be extensively tested. It is not even a home test kit, like a home pregnancy test. It is a simple device that collects a blood sample, which is then mailed to a lab and subjected to the same medical tests as blood collected in the doctor's office.

Unpersuasive Complaints

THE objections raised by critics of the kit are unconvincing. Michael Savage, chairman of the National Alliance of Lesbian and Gay Health Clinics, argued that merely printing the kit's instructions in Spanish as well as English and offering bilingual counselors will "not provide adequate and serious care sensitive to the diverse needs of Hispanic and Spanish-speaking individuals in the United States." Even if this concern is valid, it is none of the FDA's business.

Dr. Merlyn Sayers argued that "it is not known to what extent testing will increase among individuals practicing low-risk behavior, basically simply expanding testing among the 'worried well' as opposed to reaching those at true risk." Yet heightened fear of dying has serious consequences; even if the kit would only lay such fears to rest, it would be well worth the price.

Christopher Portelli, the national coordinator of the Gay Health Clinic Alliance, argued that the kit should be banned because someone—a parent or employer, say—might use it literally to force someone else to be tested. Portelli seemed unaware that there are already laws against assault and battery, which jabbing one's child or employee with a lancet would constitute.

One objection to the kit seems at first glance to have merit. Marion Brown, a counselor at the Whitman-Walker Clinic, maintained that people may have nervous breakdowns or even commit suicide if they find out over the

phone that they have tested positive. Only if they go to the doctor's office can they receive the result coupled with the necessary counseling. But surveys conducted by the Centers for Disease Control and Prevention show that 33 per cent of those tested already obtain their results by phone or mail. And 85 per cent of those tested do not receive counseling. In any case, a harried doctor is neither eager nor trained to provide the kind of counseling the gay activists would like to see.

Oddly, those who object to the kit do not consider the issue of privacy. If people want to avoid being tested in a doctor's office—where people talk, records are kept, and information is fed into insurance companies' computers—they should be free to make that choice. They should be allowed to mail in a sample with an ID number and call anonymously for an answer.

Paul Weyrich and others believe that the gay activists really object to the kit because it would cause gay clinics to lose federal dollars. A gay leader explained to me that the kit is a device of those who want to stigmatize and isolate gays. No evidence was presented in support of either theory. But it matters little. Whether the objections to the kit are driven by financial motives, paranoia, or humanitarianism, they disregard the basic facts and values involved: There is no way to stop an HIV carrier from infecting others if he engages in certain actions. To prevent contagion requires that people know if they are infected, which the kit helps establish. Since HIV infection is deadly, preventing people from using the kit is morally indefensible. □

First of the Second String

HEADY LAMAR

Lamar Alexander wants to be President. Conservatives want to know why.

RICH LOWRY

LAMAR Alexander began his second campaign for governor of Tennessee on January 26, 1978, on the front porch of his parents' home in Maryville. From there, he set out to walk across the state—the long way. At the end of each day he'd stoop to mark the spot on the road with a piece of railroad chalk, and he'd pick up there the next morning after staying with a local family. On the ninth day he was hit by a truck. He picked up his scattered brochures, limped to the town infirmary, and four days later was on his way again. The early weeks saw some of Tennessee's worst weather in fifty years. Alexander trundled through two-foot-deep snow. Finally, five months and 1,022 miles later, he arrived in Memphis, well on his way to becoming Tennessee's second Republican governor since 1920.

Mr. Lowry is NR*'s national political reporter.*

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The walk comes closer to distilling the essence of Lamar Alexander than anything else in his career. It was a studied reaction to a failure, his first gubernatorial bid four years earlier. It was precisely choreographed. Says *Hotline* publisher Doug Bailey, then an Alexander consultant: "It was logistically planned all the way. Those families and homes where Lamar stayed were chosen with great care as leaders either of churches or of their communities. Four young men were recruited out of the University of Tennessee for the washboard band that accompanied him, and there served as advance people too." But none of it would have been possible without the Gump-like single-mindedness of the candidate who did the walking.

When he decided to run for President after the 1992 elections, Alexander tried to figure out a way to walk across the United States. He settled for a drive instead. He packed up a red Ford Explorer—which was to be the symbol of his cross-country trek, just as red-and-black plaid shirts were the trademark of his walk—and stayed with families and civic leaders across the nation in the course of a nine-thousand-mile trip. No one paid much attention then. Now Alexander's relentlessness, and the readiness with which he has snatched up conservative talent for his campaign, have Washington insiders touting him as the cream of the second tier of presidential candidates, perhaps the only contender who can hang with Senators Bob Dole and Phil Gramm. No one who knows him doubts that if determination and smarts are what count, Alexander will be a real presence in 1996.

But to what end, aside from the driving (and walking) ambition of Lamar Alexander? That's the question Alexander, whose low-key demeanor sometimes obscures the intensity of his resolve, will be pressed to answer in the next year. After eight years as governor and a two-year stint as education secretary, he doesn't conjure up strong ideological images. Asked what it is about Alexander that attracts him, supporter and fundraiser David Wilson says, "Just good, sound government. . . . [He's] not flashy but good, sound, one in whom you can place confidence." You can hear the echoes of that wretched Bush campaign theme, *trust*. As Alexander campaigns on a radical reduction of the Federal Government, this grey, good-government image is exactly what he wants to shake.

Days after the conservative weekly *Human Events* ran a feature on Alexander subtitled "But Should Conservatives Trust Him?" he is eager to highlight his right-wing credentials. "We have a way of coming up with issues that categorize people," he complains. Then he goes through the litany himself: school prayer, school choice, tough sentences, the death penalty, opposition to gun control, even a piano-playing gig on the *Billy Graham Crusade*. He notes that F. Clifton White, engineer of Barry Goldwater's presidential nomination, ran his 1974 gubernatorial campaign. "A lot of the Washington perceptions of me," he says, "are based on very little knowledge."

Boy Governor

ALEXANDER grew up in rural east Tennessee, his father a school principal and then a safety engineer at an Alcoa plant, his mother the head of a private nursery school. His first political stirrings came when he attended Boys' State his junior year in high school. Alexander packed "Let's Go Far . . . with Lamar!" posters for the trip and won election as "governor" at the week-long summer camp by four votes. On the way home, Tennessee Governor Frank Clement's prediction that one day one of the campers would become governor of the state rang in his ears. After graduating Phi Beta Kappa from Vanderbilt and earning a law degree from NYU, Alexander splashed into real politics working on Howard Baker's 1966 Senate campaign. After a century of minority status, Tennessee Republicans were just beginning to work themselves off the mat, and Baker's statewide win was the beginning of the GOP renaissance.

"Baker was and probably still is Lamar's mentor," says Tom Beasley, a longtime Alexander associate. "Above anyone else's judgment, he'd probably look to Howard Baker." Baker, who served 18 years in the Senate and ran unsuccessfully for President in 1980, carved the mold for the Tennessee Republican: conservative in inclination but moderate in demeanor and temperate in judgment. "Tennessee is a border state," explains former Senator Bill Brock, who himself fits the mold. "It's had to live with one foot in the industrial camp, with the other foot in the agricultural camp. It's such an extraordinarily long state, the difference between the east-Tennessee mountain people and Memphis is as great as the difference between Pennsylvania and Texas. It's a state that requires an open mind. You have to have strong convictions, but you also have to be willing to listen."

At age 29, Alexander briefly considered challenging Brock in the Republican Senate primary of 1970 but wisely held back. Instead, he pulled off a surprise win in the gubernatorial primary in 1974. Thanks to Watergate, he got clobbered. Four years later, a newly folksy Alexander won the governorship in a race that was dominated less by issues than by the ethical cloud over the sitting Democratic governor, who was selling liquor licenses to business people. Inaugurated the same day as neighboring governor Bill Clinton, Alexander embarked on an eight-year administration—he was handily re-elected—that is widely considered a success even if it's difficult to pin down on the ideological map.

Alexander's premier accomplishment was education reform, which he saw as related to his pledge to increase the incomes of Tennesseeans. He won a year-long fight to pass a ten-point reform plan, the chief feature of which was merit pay for teachers, over the vociferous opposition of the Tennessee Education Association (TEA), which hired an unprecedented 22 lobbyists to kill the measure. Tennessee remains the only state with merit pay for teachers. Still, it's impossible to judge the success of the program by hard numbers, and Alexander himself has called his reforms "too timid."

The focus he brought to the merit-pay fight exemplifies Alexander's style of leadership. "He's the most detailed, follow-up guy I've ever seen in politics," says Beasley. The problem comes when an issue escapes his attention. While Alexander duked it out with the TEA, he did little to relieve overcrowding in the state's prisons, despite a court order. In 1985 an exasperated federal judge halted most new admissions. Alexander had to scramble to come up with a reform plan that included lighter and alternative sentences and new early-release provisions. It will no doubt command the eager attention of opposition researchers.

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So will his tax increases. Tennessee has no income tax, but Alexander hiked the sales tax by 1 percentage point to pay for his education reform, and he raised the gasoline tax three times, mostly to build new roads. "I would do that again in a minute," he says. "The bottom line is I balanced a budget for eight years. That's the old-fashioned way to do things. And I raised enough money to pay teachers more for teaching well, . . . to build one hundred miles of interstate highways . . . to create Centers of Excellence at the universities. All of these things were to improve our environment so jobs could grow. The end result has been that family incomes in Tennessee have grown more rapidly than in any other state in the last ten years."

Some of the numbers are indeed impressive: Tennessee has gone from 43rd in family incomes to 36th; its tax rate at the end of the Alexander years was still the fifth lowest in the nation; its bond rating was AAA; the state debt had decreased; and it had one thousand fewer state employees than when he took office. Alexander can't take all the credit for the good economic news. Tennessee is a right-to-work state, and it benefits from its central location. But Alexander has an acute sense of public relations, and he ensured that his state had an image as a place on the move. The full-page national newspaper ad he devised to tout Tennessee after it landed the huge GM Saturn plant in 1985 is compelling reading even today. Alexander left office with a record of soft governmental activism and the feel of a winner. He had a future. After two years as president of the University of Tennessee, the call came from Washington.

Alexander now wants to dismantle the Department of Education, which he headed from 1991 until the end of the Bush Administration. He would send the biggest part of its budget, its $100-billion elementary- and secondary-education programs, to the states in block grants for governors to spend as they pleased. A handful of functions, including student loans and anti-discrimination enforcement, could be handled by other departments. The 250-some other spending programs could be abolished. All that would be left would be a federal education advisor. "Maybe he'd have a secretary," quips one Alexander aide.

Beefing Up Education

THIS slash-and-burn plan contrasts with Alexander's record as secretary of education. He did try to decentralize education policy, but he wanted to do it by means of a souped-up federal department.

Alexander requested and won 10 per cent increases in the department's budget both years he was there. In contrast, his uninspiring predecessor, Lauro Cavazos, requested budgets that essentially kept pace with inflation, whereas *his* predecessor Bill Bennett asked for sharply reduced spending each year of his tenure. Alexander hoped to pour the additional funds into "America 2000," his program for a "revolution" in American education. The plan, President Bush's most substantive domestic initiative, had four main components: it would promote model standards for what children should learn and encourage states to adopt tests to measure what they were actually learning; fund the development of one innovative school in each congressional district; give the secretary of education waiver authority to free states and localities from federal regulation; and create a "GI Bill" for kids, giving $1,000 vouchers to the children of poor families.

The so-called GI Bill was the biggest-ticket item, costing about $500 million a year. Throughout Alexander's tenure at Education, conservatives wondered how devoted he was to school choice. White House speechwriters complained of having high-profile references to it in drafts of speeches struck by Alexander's inner circle. "At the beginning he was able to contain his enthusiasm for the idea," recalls one former White House official. But Alexander ended up fighting for choice, which never had much of a chance in Congress anyway. Nor did the rest of his program. In 1992 he had to lobby against the version of it that emerged from the House. After he and Bush left Washington, things got worse. The machinery the department had created for devising model standards—in history, for example—landed in the hands of loonies. Meanwhile, America 2000 became "Goals 2000": the standards became quasi-mandates for more education spending; testing was jettisoned; regulation was increased and placed in the hands of new federal agencies; and choice was obliterated. "They took a national movement and made it a federal program," Alexander complains.

It's difficult to find in this career much of the red meat Alexander is now tossing into the arena ("The central government is a dead weight on our future"). But it would be a mistake to see in Alexander a moderate who's talking conservative simply for the sake of expediency. Instead, he is accentuating aspects of his political personality that have been there for two decades. But the reforms he has been riding so hard —a "cut their pay and send them home" plan for Congress, strict term limits, relocating federal departments outside of Washington—are the programmatic equivalents of red-and-black plaid shirts: they have populist appeal but little content. Even the central element of his agenda, a radical federalism, is in a sense non-ideological. Many conservatives attack Washington because it's the easiest way to attack government. Alexander, by contrast, hates Washington rather than government per se.

A kind of feel-good localism runs throughout Alexander's career. As governor, he launched a program called Homecoming '86. Participating communities celebrated their heritage with special projects, such as cleaning up vacant lots and restoring buildings, and then invited back former residents to share in the new spirit of Tennessee. Alexander considers the program, hokey be-

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yond description, one of his greatest accomplishments. Much of his time as secretary of education was spent on the road, exhorting local officials to build re-energized, innovative "America 2000" communities. An Alexander Presidency would likely be a similar effort on a grander scale. "The most unique thing about America is our almost irrational belief in our future," he says. "The President, more than anyone else, has the job of helping us understand that."

Alexander will have a chance to become our national cheerleader only if he can raise about $20 million by the end of the year and convince primary voters he's fresher than Bob Dole, nicer than Phil Gramm, and in his own way as conservative as both. He's gotten as far as he has because he can talk the talk. He captured the public mood in 1994 with "cut their pay and send them home"; now he has moved on to the equally apt "Arrogant Empire." But would Alexander walk the walk, follow through on his words? His supporters would say that if there's any lesson from his political life, it's that the walking ability of Lamar Alexander is not to be underestimated. Conservatives just want to be sure of where he will wind up. □

Gerrymandering by Color

RACIAL LINES

Republicans can thank the Voting Rights Act for November's victory. They should get rid of it anyway.

DANIEL D. POLSBY & ROBERT D. POPPER JR.

AS OF this writing, according to Nexis, "landslide" has been used to describe the 1994 elections 469 times, followed by "revolution" (267 mentions), "earthquake" (135), "tidal wave" (120), and "tsunami" (18). Those descriptions are overwrought and misleading. The earth did not actually move on November 8. Something even more interesting may have happened.

In 1994 Republicans won 51 per cent of all votes cast in contested House elections, which is not a landslide and indeed is the narrowest popular-vote victory for either party since 1984. But the Republicans' margin did win them 53 per cent of the available seats. This fact should be at least mildly surprising, because Democrats controlled more state legislatures than did Republicans following the 1990 census and so could engage in more gerrymandering. With a margin that narrow, a few competent gerrymanders should have allowed the Democrats either to retain their congressional majority or to come much closer than they did. What happened?

What happened was the Voting Rights Act (VRA). As amended and reinterpreted after 1982, the VRA often requires state legislatures to construct districts in which blacks or Hispanics constitute a numerical majority ("majority-minority districts"). These minorities are overwhelmingly Democratic in most of the country. "Packing" Democrats' core voters into just a few districts does help elect more black and Hispanic representatives. But it also elects more Republicans—12 to 15 more, according to many observers, than would have been elected without the race-conscious redistricting following the 1990 census.

The VRA's pro-Republican bias is a nice irony, because no legislative program has been more important to the Democrats—the party of unintended consequences. It is difficult to overstate the amount of political capital that the Democratic Left has invested in racial gerrymandering. Indeed, Lani Guinier recently argued in *The New York Times Magazine* that within the existing (assertedly unfair) system of winner-take-all, single-member districts, stacking congressional districts by race is the only ticket to representation in Congress for African-American and Hispanic people.

Miss Guinier's appraisal is hardly compelling, because it explicitly assumes that elected officials of one race (or sex, religion, etc.) cannot legitimately, and will not in practice, represent the interests of constituents of a different race. Yet in representative systems, everyone must be represented by someone other than himself and, therefore, different from himself in important ways. "Representation" may be a legal fiction, but that does not make it an hallucination. Furthermore, it is not a good idea to encourage voters to insist on the political primacy of their racial identities rather than inspiring them to define themselves in more constructive, less incendiary ways.

But this rejoinder only rehearses the long-standing argument against the race-conscious classifications that the Left has been asserting against the rest of America for the past 25 years. Quotas are the cardinal issue of the Left; without racial politics there scarcely *is* a political Left in this country. So it is a barricade that will be defended to the end, whatever the cost to the Democratic Party.

The Democrats' Albatross

THIS political reality is obvious, but it would be embarrassing for any of the players to acknowledge that race-conscious districting, indeed racial quotas in any form, have become an albatross for the Democratic Party. Hence the bouquets of denial about the connection between the VRA and the Democrats' late change of fortune. "Don't Scapegoat the Gerrymander," Miss Guinier implored in the *Times Magazine*. "The Democrats lost for many reasons," she argued—chiefly white flight, the lassitude of the party's traditional base, and low voter turnout. In other words, the Democrats should move left and forget about the tilt of the playing field.

Elaine Jones, head of the NAACP Legal Defense and Education Fund

Mr. Polsby is Kirkland & Ellis Professor of Law at Northwestern University. Mr. Popper is a member of the New York bar.

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(NAACP-LDEF), likewise condemned the notion that the VRA had cost the Democrats dearly. In a detailed analysis reported by the *New York Times* on December 1, she invoked the tidal-wave theory. Eric Schnapper, an NAACP-LDEF lawyer, agreed: "A thirty-foot tidal wave came along." One of their colleagues, Penda Hair, put it succinctly: "It's pure racism to say that because blacks are more loyal and you can identify them by skin color, you can use them as padding to save white Democrats," she said.

Squandering Democrats

IS THERE, then, *no* connection between the VRA and the Democrats' undoing? None, says the NAACP-LDEF. At most, the VRA cost Democrats one seat, in North Carolina; on balance, the statute probably resulted in a net *gain* for Democrats.

The NAACP-LDEF dismisses the possibility that the VRA had an impact on 15 other seats gained by Republicans because the districts involved were not contiguous with a majority-minority district. But this is a grievous non-sequitur. The impact of a gerrymander, as of any districting decision, is pervasive. Every district in a state, and not merely contiguous districts, is affected by a gerrymander. The electoral makeup of a district in downstate Illinois is affected by the design of the district next door, which is in turn affected by the design of the next district over, and so on; how one gerrymanders the suburbs north of Chicago can and does affect the district map four hundred miles to the south. It therefore makes no sense to look at electoral outcomes only in districts adjoining VRA gerrymanders. The VRA hurts the Democrats precisely because Democratic-leaning voters who are concentrated for the sake of a racial gerrymander are thereafter unavailable for use in a partisan gerrymander.

Partisan gerrymanderers have long understood the principles of rigging the electoral game. Though they used to have to do it by hand instead of with a computer and a CD-ROM from the Census Bureau, it wasn't too hard to tilt the playing field, so long as the only goals were maximizing a given party's electoral success and protecting certain incumbents. Once the constraint of VRA compliance is added, modern districting becomes a far more demanding business. Having to deal with this extra factor is what largely accounts for the contorted shapes of many majority-minority districts.

It is quite hopeless to "prove," in the mathematical sense, what effect the VRA has had on election outcomes, because results inevitably depend on any number of indissolubly mixed-up variables: the qualities of individual candidates, local issues, money, luck, national political trends, the *Zeitgeist*, etc. So the VRA's consequences will have to remain a matter of interpretation. But common sense makes up for the lack of apodictic proof.

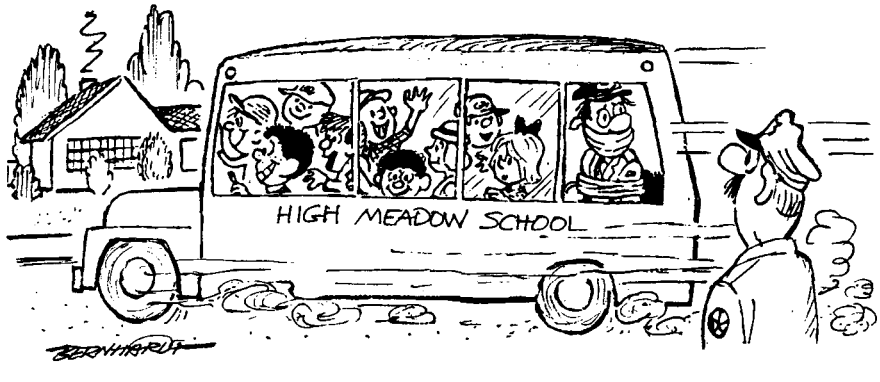
In 1994, winning Democrats in majority-minority districts garnered, on average, 73 per cent of the vote. Winning white Democrats had a much harder time: their average vote was 60 per cent, and fully one-fifth won with 52 per cent or less. Ten per cent of majority-minority district races were uncontested, as compared to less than 4 per cent of the other districts with a Democratic incumbent.

A few examples from the South illustrate the gerrymander's unhappy effect on Democrats. In North Carolina, Republicans won an aggregate of 54 per cent of the vote in the 11 contested districts and carried 7 (or 64 per cent) of those seats. In the two majority-minority districts, the Democratic winners had a total of 50,000 votes to spare. Meanwhile, three fellow Democrats who were white lost their races by 17,000, 7,000, and 1,300 votes. Charlie Rose, 22-year incumbent and czar of the tobacco and peanut subcommittee, was re-elected with only a 5,000-vote margin. (Expect a strong challenger next year, Charlie.) In Georgia, the three majority-minority districts yielded a combined victory margin of 113,000 votes. Democratic incumbent Buddy Darden could have used some of those stalwarts. He lost to Republican Bob Barr by only 5,000 votes. Two other Georgia Democrats lost by margins of 24,000 and 36,000.

There are also examples outside of the South. Dan Rostenkowski used to win the old 8th District of Illinois by 4 to 1 margins with the help of several Hispanic enclaves whose residents by 1990 accounted for nearly one-third of the district's population. After the last census, Hispanics were given their own district, a deformed fractal horseshoe of territory, stripping Rostenkowski of one of his most reliable blocs of supporters. Instead he was left with tens of thousands of Lincoln Park yuppies, who were never enthusiastic about being represented by an old-school Chicago pol and who jumped off the fantail right after the chairman's indictment.

In addition to such direct consequences, we have to consider the opportunity costs of VRA gerrymanders. How many seats would Democrats have won if, at the time of the decennial redistricting, state legislatures and governors had been at liberty to gerrymander without having to comply with the VRA? Under scores of scenarios Democrats would have been able to cobble together 13 extra seats, and a majority, in the House.

Both Lani Guinier and American University history professor Allan Lichtman have tried to shield the VRA from these brickbats by pointing out that many of the same districts that elected Republicans last November had elected Democrats only two years earlier. But the real question is more subtle than, "Who won?" It is, "Who will tend to win?" In other words, whom do the ground rules favor?



The Swing Ratio

POLITICAL scientists use what is called the "swing ratio" to measure the political impact on legislatures of changes in voter prefer-

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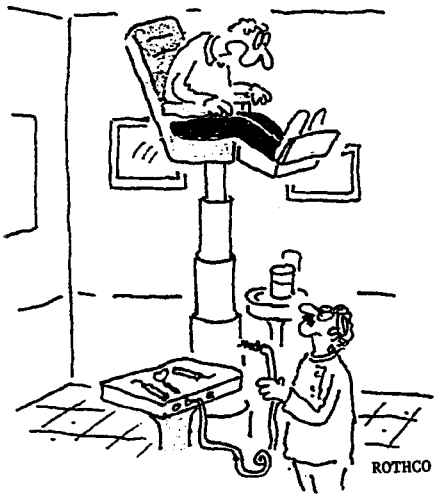

"I'm not coming down until you put that away."

ences. The swing ratio tells how many additional seats a party can expect from a given percentage increase in its margin of victory. It has long been appreciated that a majority of the vote in American-style single-member congressional districts will lead to a somewhat inflated congressional majority. A party that typically wins 54 per cent of the *votes* in a fair election might expect to win 58 per cent of the *seats*. The gap widens as the majority increases. A party that wins 70 per cent of the popular vote might win more than 90 per cent of the seats.

Ceteris paribus, the ratio of votes to seats is symmetrical between parties. If Republicans get 58 per cent of the seats when they get 54 per cent of the votes, then Democrats should expect 58 per cent of the seats when they get 54 per cent of the votes. A run-of-the-mill partisan gerrymander alters a state's swing ratio, introducing a systemic bias in favor of one party. Thus, in California in 1984, Republicans actually received more votes than Democrats in House races, but Democrats won 60 per cent of the seats because of a gerrymander conceived by the late Representative Phil Burton, a consummate exhibition of how to steal elections legally. Had Democrats polled only 45 per cent of the vote, they probably still would have won a majority of the delegation; had they carried as much as 55 per cent of the popular vote, few California Republicans would have been left. Mr. Burton's virtuosity had changed the electoral equation across the entire range of possible outcomes.

A change in the swing ratio caused by racial gerrymandering has the same multi-level effect. Close races formerly won by Democrats are now won by Republicans. Close races favoring Republicans become Republican walkovers. Formerly safe Democratic seats become contestable, which attracts better, more electable Republican candidates, whose prospects brighten as Democrats are obliged to spend money to defend formerly safe seats.

There is a secondary ripple effect that may be even more important in the long run. As John J. Miller points out in the February issue of *Reason*, racial gerrymandering inexorably pushes the Democratic Party as a whole to the left—which is to say, toward the margins of influence in political life. "Blacks now control almost 19 per cent of the seats held by Democrats in the House, up from about 15 per cent in the 103rd Congress," Miller writes. "Many are on the far-left fringes of the party, while most are just plain liberal." The country grows more conservative even as the relative influence of Jesse Jackson's rooting section increases within Democratic Party councils.

An Ambivalent Court

THIS is a grim prospect for Democrats, maybe even a recipe for a crack-up, but—another irony—they may have their bacon saved for them, over their own squeals of protest, by the Supreme Court, seven of whose members are Republicans. The Court seems not to know what to think of the VRA and racial gerrymanders. In *Thornburgh* v. *Gingles* eight years ago, it approved race-conscious districting for the purpose of enhancing minority representation in legislatures. But in *Shaw* v. *Reno*, decided in 1993, the Court said bizarrely shaped districts drawn to comply with the VRA, at least if they were *too* bizarre, might be unconstitutional without a "compelling justification."

The Court obviously needs to compose its thoughts on this matter, and there is a case before it, *Miller* v. *Johnson*, that will allow it to do just that. A decision is expected this spring. The result may be a holding that race-conscious districting is out-and-out unconstitutional. A clean decision on this subject would be a relief, but there is no particular reason to expect anything so lucid. The Supreme Court is just a glorified committee, after all, one with a rich tradition of obfuscation and tap dancing where racial politics is concerned. So it may not decide anything coherent, in which case the onus would be on Congress to decide what, if anything, to do about the VRA.

The temptation will be great for the Republican majority to write the VRA down as the Democrats' problem and walk away from it. This they must not do. The VRA is the supreme instance of racial politics in American life. It is time for the era of color-consciousness to come to an end, even if that means helping the Democrats.

Still, the majority should not be overly hasty in attacking the VRA. Quotas, "goals and timetables," set-asides, race-norming, "statistical discrimination," and a massive apparatus of administrative procedure and practice have driven the poison of rent-seeking by race into every nook and cranny of American life. All this has to be dismantled. There is a great deal to do. There is no good reason to do the VRA first. And there is an excellent reason to do it last. □

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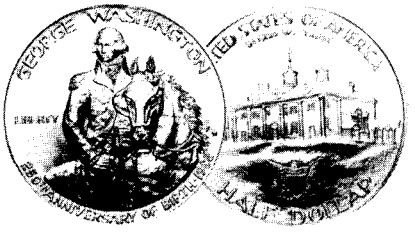

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Me-Too Crime Reform

TOP COPS

Republicans should repudiate the dangerous fiction that crime is a national problem with a national solution.

MORGAN O. REYNOLDS

THE "Taking Back Our Streets Act"—the crime-fighting plan in the Contract with America—was cobbled together from old Republican proposals intended to marginally improve bad legislation in the old Democratic Congress. A truly new Republican bill would terminate destructive federal activism by devolving power to "the States respectively, or to the people," in the words of the Tenth Amendment, whereas the actual GOP bill piles conservative activism on top of the existing mess.

Consider an example. Subsidized by federal dollars, lawyers in so-called Capital Resource Centers clog the federal courts with death-penalty appeals. Instead of repealing the subsidies, the Republican bill doubles the spending by sending an equal amount to prosecutors. If the Federal Government butted out instead, the ten-year delays in executions would plunge, a deterrent effect would begin to assert itself, thousands of appeals would vanish, and meritorious appeals would still find voluntary support.

The Republicans should repudiate the fiction that crime is a national problem with a national solution. Instead, the frightening prospect of a gradual nationalization of police, courts, and corrections lurks behind nearly every provision of "Taking Back Our Streets."

Title I tinkers with the federal *habeas corpus* procedure, by which a state prisoner can attack his conviction in federal court. This system has resulted in endless post-conviction litigation—about 11,600 federal appeals of state convictions in 1993 alone. The procedure was established by statute after the Civil War, not by the Constitution. A good bill would abolish the option entirely and return inmate appeals to the states. Every state has an independent judiciary competent to hear these pleas. Prisoner appeals allowable in state courts should not be permitted in federal courts, with the possible exception of U.S. Supreme Court review of the ruling of the highest court in a state.

Title II federalizes every crime of violence or drug trafficking in which the perpetrator possesses or discharges a firearm. This is a breathtaking and foolish federal power-grab. The feds have few law-enforcement resources to police, prosecute, and try these cases, so the provision would make little difference on the street. It would just allow media-hungry federal prosecutors to intervene in high-profile cases, despite the bill's flaccid assurance that the attorney general will show "due deference" to state and local prosecutors.

Title III provides mandatory restitution for victims of federal crimes. This has merit. Yet it's inadequate as drafted because it does not give the victim legal standing to sue the criminal. It also does not require the convict to make payment to the court until he has fallen 90 days behind in payments. This should be shortened to 30 days.

Title IV allows the director of the Bureau of Justice Assistance to make law-enforcement grants to units of local government. This is wrongheaded on at least three counts: first, it bypasses the states, the original constitutional entities that deal with the Federal Government; second, it feeds bureaucracy; and third, citizens and states should decide on the proper amounts of their own money to spend on police, prosecution, courts, and corrections rather than having federal politicians and bureaucrats make these choices.

Title V amends the Clinton crime bill, passed last year, to require that federal money designated for prisons in fact be used for prison construction. It also mandates that violent felons serve at least 85 per cent of the sentence imposed. But there is no such thing as federal money without strings. Most states do need more prisons and so-called truth-in-sentencing laws, but some do not—and those that do, have already received the message from the voters.

Title VI extends the "good faith" exception from warranted police searches and seizures to those without warrants. Under the liberalization, the constable could "blunder," but pertinent evidence obtained could be admitted in criminal proceedings on a discretionary basis. While this has some merit, it does not go far enough toward repealing the costly Warren Court "due process revolution" of the 1960s. The rule excluding "illegally" obtained evidence from the courtroom has had steep costs, but virtually no benefits in disciplining police misconduct. At a minimum, the states should be allowed to repeal the so-called exclusionary rule, letting trial judges decide admissibility case by case, and to adopt tort-law and independent administrative remedies to discipline police misconduct.

Dictating Prison Policy

TITLE VII proposes weak or redundant measures to reduce the abuse of lawsuits by prisoners. For example, it directs judges to throw out frivolous or malicious lawsuits.

The Civil Rights of Institutionalized Persons Act has allowed a tyrannical federal judiciary to dictate prison policies across the nation. In 1977, state prisoners filed 7,700 civil-rights petitions in U.S. district courts. By 1993, the number had risen to 33,000, and federal courts were controlling the prison systems—and budgets—of dozens of states. Since every state has an independent judiciary competent to

(Continues on page 76)

Mr. Reynolds is director of the Criminal Justice Center of the National Center for Policy Analysis and a professor of economics at Texas A&M University.

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RANDOM WALK

I VISITED by phone the other day with my old friend Jim Grant, financial historian, distinguished editor of a bi-weekly interest-rate report, and devoted follower of F. A. Hayek. The subject was Mexico and, in particular, why Fed Chairman Alan Greenspan was cheerleading for the Clinton–Rubin bailout package (which appears, thankfully, to be doomed). If Greenspan is to be believed, the Federal Government's failure to guarantee $40 billion or so of U.S. bank loans to Mexico will mean disaster for world financial markets, leading to global deflation and depression.

Pretty scary stuff. But Grant wondered what information Greenspan has that the rest of the world doesn't. Why isn't the looming disaster reflected by the markets? Gold has sagged back to $375. The bond and stock markets are holding relatively steady. It is high conceit to think that one guy can predict the future, while the world's investors remain oblivious. Central planning is in full retreat around the world, but we continue to believe the apparatchiks of central banking.

Anyway, Grant mused, what about the importance of loss and failure to capitalism? Wall Street seems to believe not in free markets but in free *bull* markets. Mutual funds made a fortune in Mexico for four or five years; now they have the same God-given right to lose money for a spell. That's what free markets are all about.

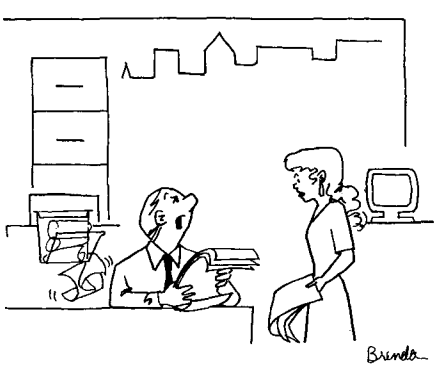
■ The GDP report for the last quarter of 1994 showed a 4.5 per cent annual increase, capping the best year for economic growth since 1987. Over all, real GDP expanded by 4 per cent from the end of 1993 to the end of 1994. Real consumer spending rose 3.4 per cent for the year, while sales of capital goods rose by nearly 16 per cent. Inventory accumulation was also strong, moving from $25 billion early in the year to $68 billion by the end of the year. Since the U.S. expanded faster than its major trading partners, the trade deficit, measured by national-income accounts, rose to $124 billion by the last quarter. Housing lagged, with residential investment increasing by only 2.1 per cent and the level of housing starts declining by more than 5 per cent. Inflation was subdued, with prices rising by only 2.1 per cent, the lowest level since 1984.

Will 1995 be as good? Very doubtful, according to veteran economist Richard Hoey, who oversees the $1.6-billion Dreyfus Growth and Income Fund. He expects the economy to slow and inflation to rise. The Fed has been draining liquidity from the economy, and so have foreign investors, by selling the dollar. Even if the dollar is undervalued by any reasonable benchmark and is likely to rise over the long haul, it remains in a bear market for now. If the economy cools down, the Fed will find it hard to defend the dollar through higher interest rates. What's more, even while the economy slows, a spurt of inflation will keep interest rates from falling any time soon. Hoey reminds us that Treasury bills outperformed both stocks and bonds in 1994. He expects the same in 1995.

■ Looking for new betting opportunities now that we're into the post–Super Bowl season? Political guru Stuart Sweet, president of Capitol Analysts Network in Chevy Chase, Maryland, suggests there is money to be made by putting early bets on the 1996 presidential sweepstakes. Sweet has been tracking the British betting parlor Ladbrokes. Amazingly, Ladbrokes puts the probability of a GOP 1996 takeover of the White House at 67 per cent. As of early January, here are Ladbrokes' odds for various candidates:

Bill Clinton: 5 to 2
Bob Dole: 5 to 1
Colin Powell: 8 to 1
Newt Gingrich: 8 to 1
Phil Gramm: 8 to 1
Lamar Alexander: 12 to 1
Al Gore: 14 to 1
Ross Perot: 33 to 1

So where do the smart bets go? Sweet's advice is to follow the fundraising dollars. He finds that seven of the last eight nomination fights in both parties have been won by the candidate with the most funds on hand two months before the New Hampshire primary. (The only exception was Reagan's victory over bigger spender John Connally in 1980.) All of this would mean that Phil Gramm, at 8 to 1, is a steal. Gramm has almost twice as much money as Dole and ten times more than the rest of the GOP field. But though Sweet likes Gramm's odds, I'm inclined toward none of the above.



"In this office, two things are certain—debt and faxes."

■ Good news for U.S. investors. Last year I reported that during the first year of Clintonomics the U.S. plunged to 22nd out of 25 major nations in terms of returns on its stock market. I'm happy to report that in 1994 the U.S. performed better, thanks mainly to abysmal performances by the emerging-market nations. According to the *Wall Street Journal*'s "Dow Jones World Stock Index Review," in 1994 the U.S. stock market catapulted into 18th place. With a –0.9 per cent rate of return, we zoomed ahead of Mexico, Thailand, and Indonesia—all of which were deep in the red. Better yet, we're nipping at the heels of Canada and Austria. Now I understand how Bill Clinton felt when, during his tenure as governor, Arkansas sped past Mississippi and Louisiana in the rankings of infant mortality and per-capita income. —GEKKO

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THE VICE PRESIDENT

WASHINGTON

January 30, 1995

Dear Rusty,

Forgive me if I'm a little emotional in this letter. I just finished Tolstoy's Anna Karenina—can you believe that I got through St. Alban's and Harvard without reading it?—and I'll be totally honest with you: for a book without one reference to biodiversity it moved me immensely. It's one of those books that I've been meaning to read for years and years, and I finally managed to find the time for all 740 pages.

I'm up on the dais in the House of Representatives right now, listening to Bill give the State of the Union speech. I guess I timed it wrong, because I've just now finished the book, and Bill's still talking. To my left, Speaker Gingrich has done his taxes, devoured a copy of Martin Gilbert's history of World War I (running through two yellow highlighter pens in the process), and from the looks of it, he's written the first couple of chapters of his new book. A few minutes ago, he shut off his ThinkPad and started eying my copy of Anna Karenina, which worries me, because I hate to lend books out.

It's an amazing view, Rusty. From where I sit, I can see the entire leadership of the United States—in the gallery, Mrs. William J. Clinton fanning herself demurely; Tipper chatting amicably with Colin Powell; Strom Thurmond sleeping against Jesse Helms sleeping against Bob Byrd sleeping against Howell Heflin sleeping against a very irritated Orrin Hatch; Chris Dodd whispering to Ted Kennedy (or is it the other way around?—it's getting hard to tell those guys apart); Ron Brown clapping as hard as a man who's wearing handcuffs can; and Newt to my left, who has just finished the "Trans-O-Gram" in National Review.

You know, it just occurred to me that nearly the whole government is here. I don't know if you've read the latest Tom Clancy novel, but in the final chapter, a crazy Japanese kamikaze pilot dive-bombs the Capitol during the State of the Union message. If a Japanese kamikaze dive-bombed the Capitol tonight, Secretary Donna Shalala would be our next President. (She couldn't make it tonight due to long-standing Joan Armatrading tickets.)

The great thing about Bill's voice is how soothing it is. I've read the speech already, so of course, truth to tell, I'm the tiniest bit bored. By hour two I thought to myself, okay Al, look interested—this one's for posterity. But it's hard to feign interest in a speech you know by heart, and by hour three I think the cameras might have caught a stifled yawn or two. Of course, by that time, Anna and Vronsky were well into their affair and the next thing I know, Anna is at the railway tracks calling out, "God forgive me everything!" and the train hits her and my eyes fill with tears just as Bill calls for an extension of the grazing-rights task force recommendations. Talk about your lucky breaks!

This afternoon, Bill dropped by the Oval Office to show me the speech in its rough-draft form. Mr. Panetta had given him a strict page limit—no more than 30, he barked—but Bill had so much to say that the speech ran to roughly 640 pages, single spaced.

"What do you think, Al?" he asked after I had skimmed the speech.

"I'm a little concerned, Bill," I said. "This speech is going to last about seven hours."

"Yeah, I know," Bill said glumly.

"And no mention of our efforts to restore the Gila trout to its pre–San Anselmo Dam levels."

"You're right, Al," he muttered as he walked off, scribbling additions to the speech.

The whole speech was almost canceled due to the untimely suicide of the TelePrompTer typist, who hanged himself in the control room moments after receiving his copy of the speech. I have a feeling this is going to be another whole suicide megillah, as Bob Reich would say.

Bill's voice is hypnotic. If I listen long enough and stare hard enough at the silver-haired back of his head, the whole episode takes on an almost dreamy quality. I can remember being a child in Carthage, Tennessee. I remember Watershed, my first dog, a beautiful black Labrador. When we moved to Washington and Watershed had puppies, Dad let me keep them—Bell Hop and Room Service Waiter.

And I remember my first date with Tipper, and how she wrote the words "Kristin, Sarah, Karenna, and Little Al" on a napkin with lipstick and gave it to a gypsy woman. And now I'm very relaxed and thinking how sad it is that Anna had to throw herself under a train and how interesting that Newt is taking the cost of his ThinkPad as a deduction, and how Orrin Hatch is going to need to get his suit jacket cleaned and how pretty all the lights and colors are and how wonderful Bill's speaking voice is if you just don't inhale . . .

Bye, Rusty—

Your pal, Al

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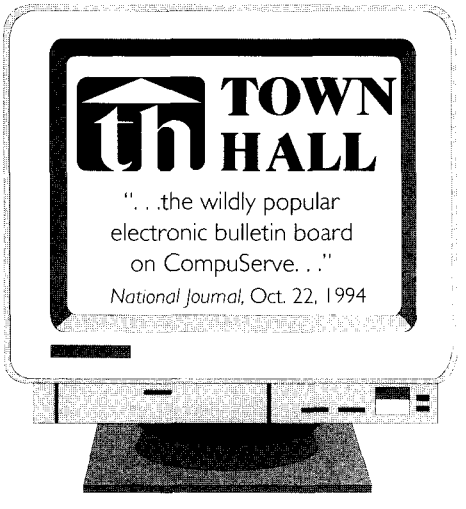

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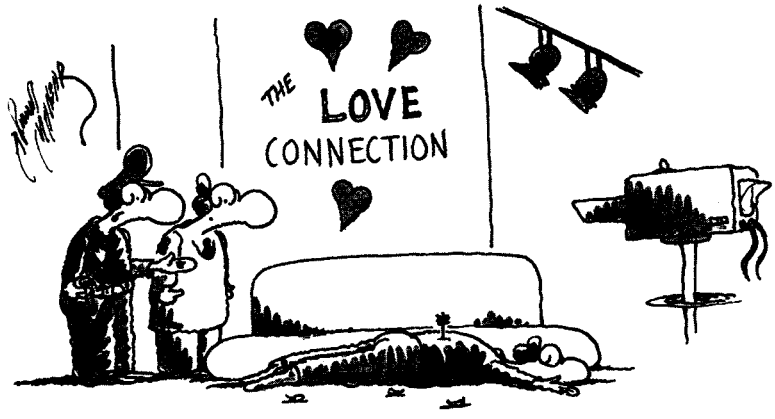
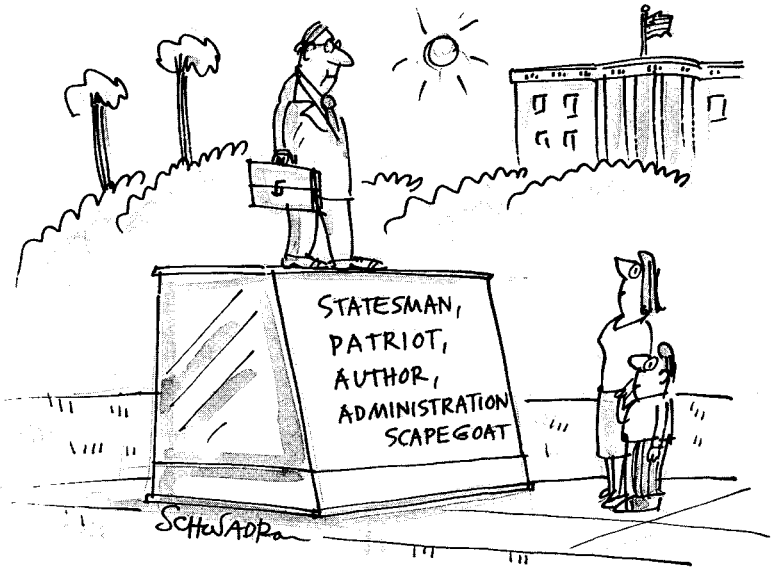


"The teeny little arrow. The stray feathers. It looks like a turf war, lieutenant."



"Good evening, and welcome to our Maureen O'Hara film festival."

Glorobots

Said a mellow old robot named Newman,
"When a man does not act with acumen,
  But is clumsy and coarse
  I consider the source,
And remember that he's only human."

GLORIA A. MAXSON

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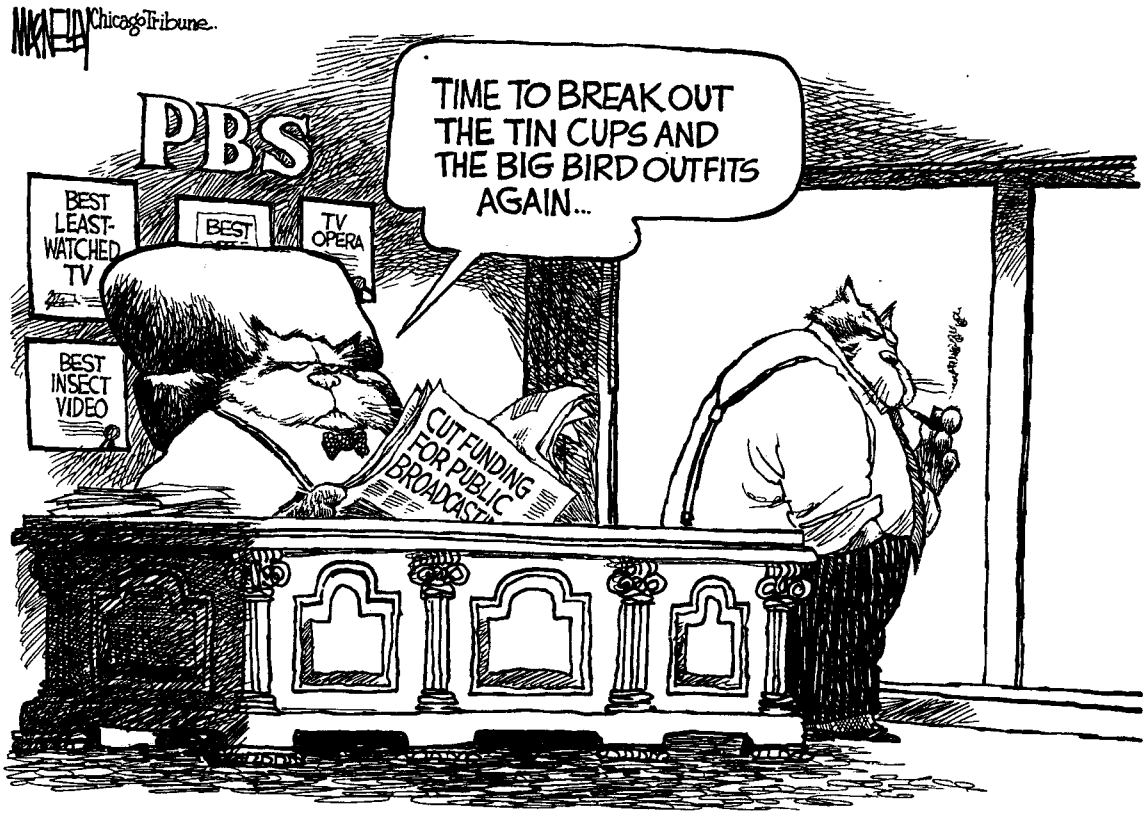

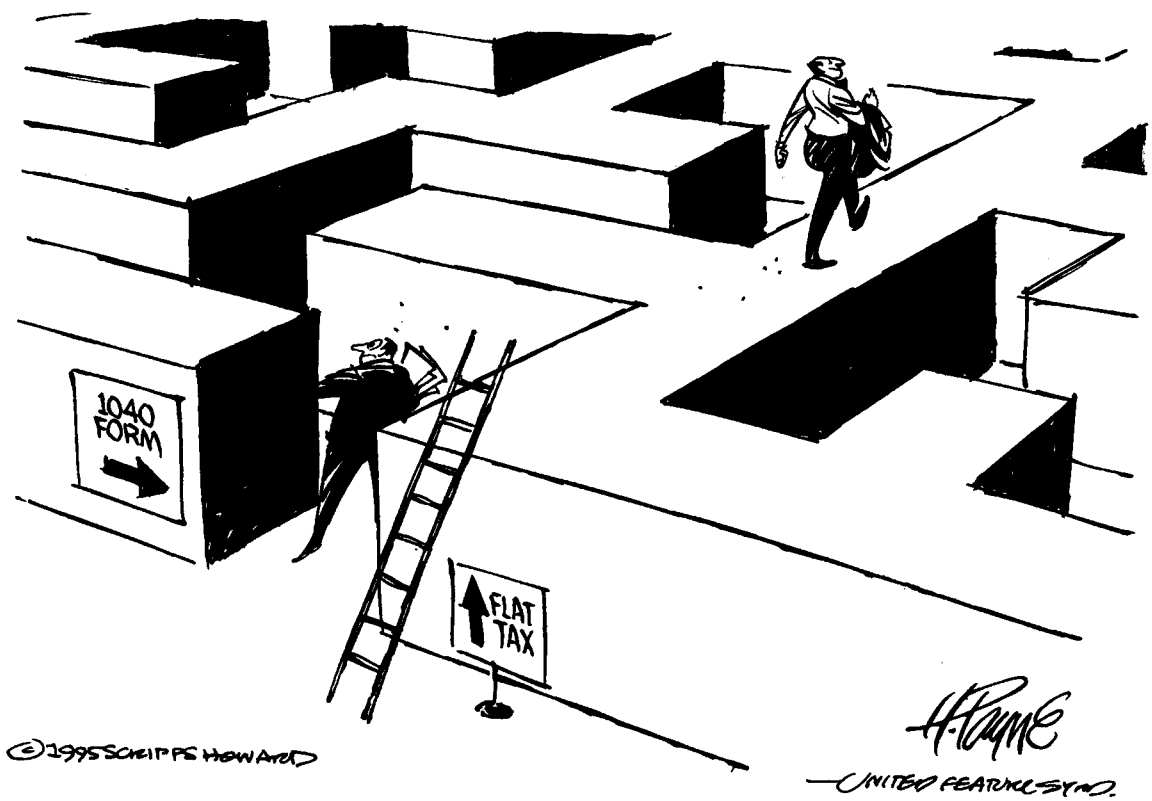

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The Moral Case for Manners

J. BUDZISZEWSKI

GOOD MANNERS seem to be taking it in the chops lately. College students blatantly read newspapers in class. Columnists in these newspapers call the First Daughter ugly. The President calls Rush Limbaugh fat. Rush Limbaugh defends a liberal for calling women broads. Women give men dirty looks for opening doors. Panhandlers gather around the doors to insult passersby. Passersby sport T-shirts insulting panhandlers. Auto bumpers sport stickers telling other drivers what they can eat if they don't like how the owner is driving. The other drivers make crude gestures because they are trying to get to their assertiveness-training class. The class starts late because the teacher is never on time.

Discourtesy, ingratitude, boorishness, and indecorum are now so much expected in public life that one begins to make sport of them. At any televised awards ceremony, the odds are good that one of the following things will happen: one of the recipients will abuse the presenters; one of the presenters will abuse the recipient; either a presenter or a recipient will abuse third parties not present; or the proceedings will be disrupted by demonstrators. Place your bets.

Bonnie Gardner

Could the decline of good manners be a sign of progress? Some people think so. It is variously said that:

The ultimate value is authenticity, and good manners are inherently inauthentic. Only a hypocrite feigns what he does not feel. Don't I have to be me?

The ultimate value is equality, and good manners are inherently inegalitarian. Only a fool defers slavishly to age, authority, or the female sex. Aren't I as good as you?

Good manners make a fetish of the form of conduct while ignoring its goal. Sometimes a speaker should be shouted down without a hearing, and sometimes he shouldn't. Doesn't it all depend on whose ox is being gored?

Bad manners are a way of blowing off steam. They give people a way to settle their scores without resorting to violence. Isn't a rude word or a slammed door better than a punch in the head?

Finally there is the argument I call, with apologies to the Vatican, the "preferential option for the poor": *Demanding good manners is merely a way of keeping down the disadvantaged. They can't join your mannerly debates because they haven't got the education. To ban the use of shouting, vandalism, and obscenity is to ban their only way of getting your attention. Aren't you really telling them, "Shut up"?*

Although the preceding arguments come from the cultural Left, the assault on courtesy finds echoes on the Right as well. Consider an example. The fall of chivalric or gentlemanly courtesy has had the predictable consequence of weakening men's sense that women are to be protected instead of preyed upon. Unable to recognize the true source of the problem, feminists now make it worse by *defining* men as predators: marriage is slavery, intercourse is rape, a compliment is sexual harassment. Sometimes, in satirizing such fanaticism, we miss an opportunity to rake up the embers of the older ideal. In order to re-establish the propriety of appreciating female beauty, for instance, the most talented rhetorician in conservative ranks humorously calls attractive women "babes" and pretends to transmit "mental orgasms" to them. As intended, this outrages feminists. But it also outrages ladies. Now I like Rush Limbaugh. But if I were privileged to advise him, I might speak to him as follows: Unlike a feminist, a lady does not expect us men to cut off our organs of generation. But she rightly expects us not to speak as if our organs were always erect. By an in-your-face defense of conduct that violates the code of gentlemanly courtesy, we merely deepen its disrepute.

For these and many other reasons we find that courtesy and good manners need more than teaching and reinforcement today. They need an intellectual defense. After all, some of the young have good intentions, but are baffled by the culture and are trying to figure things out. Some of the grown have figured things out already, but could use a reminder. Some of the rest of us need answers for barbarian colleagues who demand reasons for what ought to be obvious. And some of us simply need to have our spines stiffened before we face our children: "*Why* must I write Grandma a thank-you letter? She knows I got the present, and I didn't like it anyway. You don't want me to *lie*, do you?"

In brief, then, here is what might be called the theory of manners, which is part of the applied theory of virtue.

Becoming better than we are. Good manners are a species of custom. Courtesy is the virtue that concerns them. This virtue finds its initial place in a world in which people are flawed in virtue generally, but would like to be better than they are. For courtesy has two interesting properties. One is that because it has more help from custom, it requires less exertion of judgment than some of the other virtues and is therefore easier to learn. The other is that up to a point, it

Mr. Budziszewski, an associate professor of government at the University of Texas at Austin, is the author most recently of True Tolerance: Liberalism and the Necessity of Judgment *(Transaction).*

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pulls some of the others along. It incubates them, providing a protected environment in which they can grow.

The sincerity of pretense. Here is how this incubation works. As I am now, I want what I ought not want, and I do not want what I ought to. My feelings are at war with the person I want to be. One of the things I do about this is wear a mask, just as beautiful as I can make it. Masks, of course, can be used to deceive, but in courtesy that is not the aim. As C. S. Lewis, Gilbert Meilaender, and others have explained, I wear the mask partly in the hope that my true face will gradually grow to fit it, and partly in the hope of not setting a bad example in the meantime. "If you please," "thank you," and "the pleasure is mine" may be mere formulae, but they *rehearse* the humility, gratitude, and charity that I know I ought to feel and cannot yet.

Playing along. Good manners concern not only my mask, but yours. Though I may not have sense or self-knowledge enough to recognize *all* the bad habits by which I make life unnecessarily difficult for you, even a well-meaning clod knows some of the counsels of courtesy because they are taught to him by custom. I should not be late for my appointments; that risks provoking you and making your mask slip. If you are my customer, I should not use your first name as though you were my fishing buddy; we need to remember which masks we are wearing because differences in station dictate differences in duties. If I am a woman, I should not wear a party dress to work; that is both confusing *and* provoking, because the ambiguity annoys. It seems to be a come-on. Can one wear two masks at once?

The golden mean. Even with the help of custom, *some* judgment is necessary to the practice of courtesy, because customs are rules that work only in *most* cases, and there are always exceptions. Thus, more than just a habit of following good manners, courtesy is a developed ability to adapt them wisely to place and time in a way that preserves their intention. In this it resembles the other virtues. As courage finds the mean between the cowardly and the rash, friendliness finds it between the cool and the co-dependent, and tolerance finds it between the narrow and the overindulgent, so courtesy avoids two opposite mistakes: on the one side rigidity of manners, on the other side carelessness.

Celebration. All this talk of avoiding opposite vices may seem depressing. But we need not be somber about courtesy. Really well done, good manners not only rehearse the ideal of virtue but anticipate and celebrate it, much the same way as ballroom dancing celebrates the ideal of marriage. In both there is a playful, shifting counterpoint of speech and movement in always mutual, yet always asymmetrical, submission. "May I?" "Please go on." "Shall we?" "By all means." Step, step, step, turn. Among the saints, rehearsal would be nothing, celebration everything; courtesy would be a mode of frolic sanctity. There is a glimpse of that in every courteous smile.

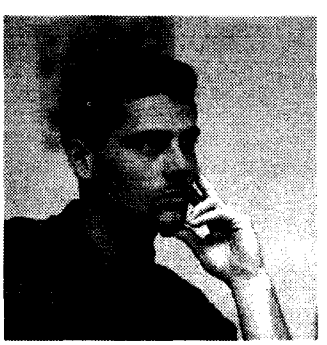
So armed, we can reply to the debunkers.

As to the argument that good manners are inauthentic: There are two mistakes here. The small one is that every kind of mask is meant to deceive, and we have already seen why that is false. Behind this small error is the larger one of thinking that being myself is a thing of great value. In fact it has hardly a value at all. Only by losing my life will I save it; only by forgetting about being myself will I find out who I was meant to be. It will be objected that this is a religious answer. That I cannot help; it happens to be true.

As to the argument that good manners are inegalitarian: So they are, root and branch. And there is a grain of merit in thinking this smells fishy. Humility is necessary for everyone, because we share in both the dignity of being made in God's image and the shame of not acting like it. Here the equality of grace might begin; but here the equality of nature ends. We do not all have the same strengths, weaknesses, experiences, or stations. By pretending that we do, we lose the only ground on which we can support or make claims on one another. One cannot build an arch from identical bricks.

As to the argument that manners depend on whose ox is being gored: At least the debunker is right on one point. Not only in arms but in ideology, there is a time for war and a time for peace. But if we are to speak of war, let us speak of Just War: there must be justice not only in the cause, but also in the way we fight for it. Adapted to ideological warfare, the principles for waging war justly are as follows:

"Merely having an open mind is nothing. The object of opening the mind as of opening the mouth is to shut it again on something solid."
~ G. K. Chesterton



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First is *right intention*. The aim of those who war for truth should be agreement in the truth; therefore, they should avoid any acts that would hinder ultimate conversion. Second is *proportionality*. Combatants should avoid tactics that do more harm to truth in general than good to the particular truth that is at issue; therefore, they should use no force but the force of better argument. Third is *discrimination*. Attacks on non-combatants are impermissible; not only the speakers but the audience should be respected.

As to the argument that discourtesy blows off steam: This line of reasoning works no better in the debate over manners than in the debate over pornography, for one bad deed may be catharsis, but a series of bad deeds is practice. The only way that slamming a door blows off my wrath is by indulging it. By failing to practice self-control, I grow less and less able to exert it. Instead of growing to fit a beautiful mask, my face freezes in the expression of Hell.

As to the "preferential option for the poor": No point that requires shouting, vandalism, or obscenity for its expression is worth hearing. If the poor really lack the education to get one's attention without such means, truer justice would be to educate them. Does the debunker believe they are incapable of education, or incapable of courtesy?

One hears that people today have bad manners because they are too wrapped up in seeking what is good for themselves. I don't think they care too much about the Good; I think they care too little. Bodily and external goods are nearly worthless without the goods of character, for then, once our comfort has been secured, the rest of our lives is blown away in spume and eaten up in vexation. I said before that courtesy finds its initial place in a world in which people are flawed in virtue generally, but would like to be better than they are. The dance of courtesy is interesting only to those who have discovered the romance of virtue. □

Justice Sutherland, One of Us

ALEX KOZINSKI

CONSTITUTIONAL interpretation is a messy business; it always has been. Since the Supreme Court discovered early in the last century that it could strike down laws repugnant to the Constitution, there has been a lively debate over the proper scope of that power. The precise terms of the debate have changed over time, but the outline has remained the same: Giving judges broad authority to invalidate legislation interferes with the people's right to govern themselves, transferring power to an unelected, politically unresponsive oligarchy; a narrow power of judicial review abandons individuals and minority groups to the tender mercies of the majority. After almost two centuries of trial and error, we are no closer to developing a comprehensive theory of constitutional adjudication than physicists are to developing a unified field theory.

The Return of George Sutherland: Restoring a Jurisprudence of Natural Rights, by Hadley Arkes (Princeton, 312 pp., $29.95)

At the heart of any constitutional issue lie two closely related questions. First, what is the scope of the powers the majority may properly exercise through the instruments of government? Second, in what areas must individuals be free from government restraint? During much of our constitutional history these questions were resolved by references to a theory of "natural rights," which defined the individual's relationship to the state less by parsing minutiae of constitutional text than by drawing on transcendent principles of fairness and justice.

Natural-rights theory fell into disrepute after it was used as a basis for invalidating much New Deal social legislation, and has since been treated largely with disdain by judges, lawyers, and constitutional theorists. In his new book, Hadley Arkes, an Amherst professor and *NR* contributing editor, seeks to rekindle interest in natural-rights theory and rehabilitate a Supreme Court Justice who was one of its staunchest proponents. It is a book worth serious consideration.

Visit a constitutional-law class in any law school today and chances are you will hear George Sutherland mentioned, if at all, in derisive and dismissive terms. He is typically lumped in with the rest of the "Four Horsemen"—the Supreme Court Justices (Sutherland, McReynolds, Van Devanter, and Butler) who frequently voted as a bloc to invalidate New Deal legislation. Sutherland's jurisprudence gets virtually no attention, and his character is often confused with that of McReynolds, a cantankerous bigot. Mr. Arkes works hard to rescue Sutherland from the lowly ranks to which modern scholarship has consigned him. He points out that Sutherland was in many ways the antithesis of McReynolds: as a person, he was respectful, gentlemanly, and kind; as a legal scholar, he was thoughtful and erudite.

Many of Sutherland's ideas, Mr. Arkes notes, were thoroughly modern and have found a lasting place in our jurisprudence. In two cases involving statutes that set minimum wages for women but not for men, Sutherland wrote opinions stressing the irrationality of laws that presume women less capable than men of fending for themselves in the marketplace. In another case, he reversed the convictions of seven black men (the so-called "Scottsboro boys") who had been sentenced to death in Alabama for raping two white women. The ruling, grounded on the inadequacy of the defendants' court-appointed lawyers, came three decades before the Supreme Court announced that criminal defendants are generally entitled to be represented by counsel. In yet another case, Sutherland upheld the President's broad authority to act, even without the consent of Congress, in the area of foreign relations. Around the same time, Sutherland held that Congress could bar the President from removing members of independent agencies—an opinion that played a prominent role in the Supreme Court's recent decision upholding the independent-counsel statute.

These achievements, Mr. Arkes complains, have been obscured because few have bothered to take a careful look at the theory that animated Sutherland's approach to constitutional law. Arkes spends much time analyzing and explaining Sutherland's work to show

Judge Kozinski sits on the 9th Circuit Court of Appeals. He gratefully acknowledges the assistance of his law clerk Paul Watford.

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that it reflects, not an obdurate refusal to yield to the Zeitgeist, but an integrated theory about individual rights and the workings of government.

Reading through Sutherland's opinions, one comes to agree with Arkes that this was, indeed, a thoughtful jurist with a carefully honed sense of the proper interplay between governmental power and personal freedom. But his jurisprudence was certainly not flawless. First, many of Sutherland's opinions rest on the premise that the Constitution protects liberty of contract—a premise Sutherland did not justify or examine. He offered no answer to other Justices who argued that nothing in the Constitution protects that right, nor did he have a satisfactory response to the argument that the Supreme Court has often approved significant limitations thereon. Sutherland similarly dodged a number of difficult constitutional issues in the Scottsboro case. While the result he reached is consistent with modern notions of justice and due process, he failed to explain how Alabama could have a constitutional duty to appoint *effective* counsel when the Court had not yet held that the states have a constitutional duty to appoint any counsel at all.

Second, Sutherland frequently based his conclusions on anachronistic legal technicalities. For example, in 1932 he struck down an Oklahoma statute that required a certificate of necessity as a condition of manufacturing or distributing ice. Sutherland's opinion turns on his conclusion that the ice business was not "affected with a public interest," and thus could not be subjected to such pervasive regulation. But, as Brandeis pointed out in dissent, if the Oklahoma legislature had concluded that ice was a commodity of great public importance in that state, what basis did the Court have to disagree?

Constitutional scholars point to decisions like these in arguing that Sutherland and other natural-rights theorists merely read into the Constitution their own notions of public policy. The implication is that current constitutional doctrine is more objective and more firmly rooted in the Constitution's text. Lest we focus on the mote in Sutherland's eye and miss the beam in our own, it's worth considering how dramatically modern jurisprudence departs from the text and structure of the Constitution.

There are, in fact, three ways the modern Supreme Court has slipped its constitutional moorings. The first is the best known and the most controversial: the practice of announcing unenumerated rights (that is, rights that do not explicitly appear in the Constitution's text), such as the right to travel, to marry, or to use contraceptives. Without questioning the legitimacy of any of these rights, one nonetheless has to wonder why the right to make contracts is not also a legitimate candidate for inclusion. Entering into contracts—for employment, for housing, for the purchase and sale of property—is one of the most important expressions of personal autonomy. If you doubt me, try imagining what life would be like if you woke up tomorrow and learned you were barred from entering into any legally binding arrangements. Yet Sutherland's assumption that the Constitution protects—to some degree at least—liberty of contract is greeted with hoots of laughter by the same scholars and jurists who most vehemently support other unenumerated rights.

The second way modern jurisprudence escapes textual constraints is the converse of the first: ignoring constitutional provisions that are actually there. As Professor Sanford Levinson of the University of Texas points out in a compelling article aptly titled "The Embarrassing Second Amendment," a strong constitutional argument can be made that there are significant limits on the government's power to control the private possession of firearms. This argument has never been given serious consideration because the principle protected by the Second Amendment is repugnant to most academics and jurists. There are other constitutional provisions, like the Ninth Amendment—not to mention the Framers' central assumption that the Federal Government would be a government of limited powers—that have, to borrow a phrase from Judge

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Bork, fallen into desuetude for lack of judicial attention.

Last, and perhaps most pernicious, is the judicial practice of emphasizing certain favored constitutional provisions while giving a narrow compass to disfavored ones. Consider, for instance, the degree of judicial attention lavished on the First Amendment, which has been read to protect activities as disparate as flag-burning, nude dancing, and libel. Similarly favored are the rights of the accused, which have been interpreted so as to give rise to the *Miranda* litany, the right to counsel in all serious criminal proceedings, and the right to vastly heightened judicial scrutiny in cases involving the death penalty. By contrast, the Contract Clause has been read so parsimoniously as to strip it of almost any practical application, and the Takings Clause has been so encrusted with obstacles as to place any effort to secure judicial relief off limits for the impecunious or the faint of heart. Nothing in the text of these provisions justifies such disparate treatment; it's that those involved in making constitutional law tend to favor some and disfavor others.

Compared to modern jurisprudence, Sutherland's work is a model of restraint and consistency. Though he based many of his constitutional rulings on an unenumerated liberty of contract, this was a right recognized in state and federal courts long before his time. And his natural-rights approach did not stop with freedom of contract, but extended to freedom of the press, representation at trial, equal treatment without regard to sex. The tradition on which he relied, moreover, has deep philosophical roots and was clearly embraced by the Founding Fathers. How else could the Declaration of Independence refer confidently to "unalienable rights"—rights by definition pre-dating the Constitution?

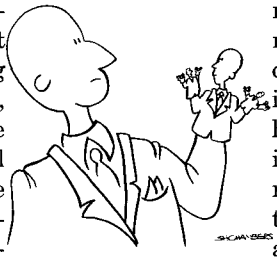
What Sutherland lacked was a body of constitutional scholarship to support his views. We are more fortunate. A new generation of scholars is challenging modern constitutional orthodoxy, and their work frequently provides support for Sutherland's approach. This body of scholarship includes groundbreaking work on the Ninth Amendment by Boston University's Randy Barnett; finely honed historical analysis of natural-rights jurisprudence by University of Minnesota Professor Suzanna Sherry; a provocative article by Northwestern University Professor Gary Lawson (with Patricia Granger) casting new light on the scope of federal power under the "Necessary and Proper" Clause; and highly original writings by Yale Law Professor Akhil Amar raising doubts about much of the Supreme Court's Fourth Amendment jurisprudence.

Mr. Arkes's work is a welcome addition to this emerging body of constitutional thought. If given the attention it deserves, it may well fulfill both objectives embodied in its title. □

What Formed the Founders

FORREST McDONALD

IT IS a cliché among historians that each generation tends to reshape its perception of the past to make it accord with its own biases and preoccupations: the dictatorship of the Zeitgeist. From the Progressive Period through the New Deal, for example, the American Founding was seen largely as the product of struggles between economic "haves" and "have nots," the former triumphing with the establishment of the Constitution. During the Sixties and Seventies, historians began to read the Founding in ideological terms, the most fashionable version being that the Framers were impelled by the revival of interest in the ancient republics, which were seen as militant and anti-capitalistic participatory democracies. More recently, as is exemplified by these two works, the focus has shifted again: the Founders were concerned with none of the above, but with religion and law.



The Myth of American Individualism: The Protestant Origins of American Political Thought, by Barry Alan Shain (Princeton, 394 pp., $39.50)

The Language of Liberty, 1660–1832: Political Discourse and Social Dynamics in the Anglo-American World, by J. C. D. Clark (Cambridge, 404 pp., $59.95)

Barry Alan Shain's message about the Founding is that, for all the Revolutionary generation's talk about rights and liberty, it understood those matters not in individualistic terms but collectively and communally. Indeed, except for freedom of conscience and its counterpart, individual salvation, the very idea of individualism was relatively new and not widely accepted. Even in regard to salvation it was generally agreed that—because of original sin—no one could obtain it without the reinforcing moral support of and policing by the community. The right to liberty was the right of the community to defend itself against outside interference and against heterodoxy within. Belief in individual rights did not seriously begin to emerge until the nineteenth century, and until well into the twentieth individual rights were always regarded as subordinate to the rights of the community.

Surprising as these observations may appear, they are not entirely original with Mr. Shain. Such historians and political scientists as Ron Peters, John Roche, Robert Palmer, William Nelson, and Michael Kammen have written along the same lines. Two features of Shain's work, however, make it especially valuable. One is the thoroughness with which he has built his case on primary sources, especially sermons and political tracts, as well as on secondary literature. The other is his location of the origins of Americans' values: not in classical republicanism, nor in rational humanism, but in reformed Protestant Christianity.

If Mr. Shain's analysis has a weakness, it is one that arises from a strength. He is concerned with what ordinary Americans thought and believed, not with "elite opinion," and that is to the good. But elites cause things to happen, and holders of elite opinion in the Founding period were powerfully influenced by the publication of *The Wealth of Nations* and its

Mr. McDonald, a professor of history at the University of Alabama, is the author most recently of The American Presidency *(Kansas).*

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famous passage, "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love." If Americans were as otherworldly as Shain depicts, such thinking could scarcely have taken root so thoroughly and so quickly.

J. C. D. Clark's study is broader in scope, dealing with both Britain and America and also plumbing the legal dimension along with the religious. It is extremely learned, describing more about the labyrinthine disputes among dissenting sects than I imagined existed. Too, the work is provocative. Thus, for instance, the "paranoid style" in our early politics, noted by other scholars, Clark interprets as growing from a tradition of rising in rebellion out of fear of popish plots. Again, the work is persuasive, to a point. To be precise, up to page 125, whereupon Mr. Clark goes off the deep end with an outlandishly misinformed proposition.

To appreciate the magnitude of the boner, a bit of background is necessary. Contrary to the old Whig interpretation that depicted England's Glorious Revolution as establishing English liberty, Clark accurately describes it as embodying the triumph of government by Crown-in-Parliament, a single constitutional entity with absolutely unchecked power (able in the Blackstonian formulation to command anything that was not naturally impossible). Accurately, too, Clark recognizes that eighteenth-century Americans failed to understand this reality, and perceived what Crown-in-Parliament was trying to do to them as if the Glorious Revolution had never happened, as if Crown, Lords, and Commons were still distinct entities, each of which had the power and responsibility to restrain the power of the others. The incompatibility of the two understandings made reconciliation in 1776 impossible.

But then Clark goes on to maintain that the writing of the Constitution in 1787 "in a fundamental sense reversed the verdict of 1776," that "Sovereignty in the United States therefore proved to be as transcendent and absolute, as despotic and uncontrollable as in the United Kingdom." He quotes *Federalist* 39, James Madison's famous description of the Constitution as being "partly national, partly federal," but he adds that "this was not what the authors re-

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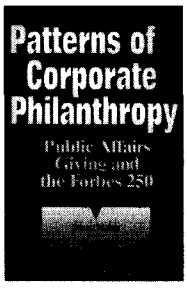

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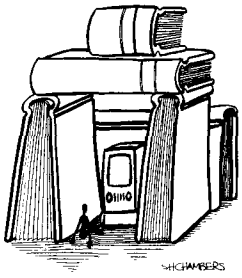
ally meant. . . . They adhered to the idea of indivisible sovereignty" as proclaimed by Blackstone. Actually, of course, the genius of the constitutional system was precisely that it did divide sovereignty, despite theorizing that such a feat was impossible. For as Alexander Hamilton put it in 1791, the national and state governments each were given "sovereign power as to *certain things*, and not as to *other things*." Moreover, the Ninth and Tenth Amendments were not added to the Constitution tongue in cheek.



Despite this colossal blunder, there is much of value in Clark's book, and I would offer a final comment apropos of what I said at the beginning. It is true that fashions in historical interpretations come and go. But we need not recast the past periodically; rather, we can incorporate the valuable insights each generation contributes. Having been in the game for many a year, I can attest that the growth of our knowledge is cumulative and that we do understand far more now than we did when I was a pup. □

Industry and Empire

FAREED ZAKARIA

JOSEPH CHAMBERLAIN was the most important English politician in the last century never to be prime minister. He was more powerful than most party leaders and had more impact on policy than most prime ministers. In reviewing the first of Chamberlain's biographies, Winston Churchill marveled at his legacy: "He lighted Beacon fires which are still burning; he sounded trumpet-calls whose echoes still call stubborn soldiers to the field." Six decades later, reading Peter T. Marsh's thorough, highly intelligent, and well-written biography, one realizes that the embers still glow and the music lingers on. Too bad, for Chamberlain's legacy is a decidedly mixed one. And despite the many differences between Britain then and America now, the story has more than a passing relevance to some of today's debates.

Joseph Chamberlain: Entrepreneur in Politics, by Peter T. Marsh (Yale, 720 pp., $45)

Chamberlain's importance in late-Victorian Britain is obvious. He occupied high posts, first in the Liberal government of 1880–85, and then in the Conservative government a decade later. He was at the center of the two most divisive political battles of his time—over Irish Home Rule and free trade—and managed to split both of Britain's national parties (the Liberals over Ireland and the Tories over free trade). As colonial secretary (1895–1903) he launched a crusade for imperial unity which, while never realized, deeply affected Britain's foreign policy for decades. He founded a political dynasty; one son (Neville) became prime minister and another (Austen) foreign secretary.

To an observer today, however, what is most striking about Chamberlain's political life is that it is an allegory for Britain's journey from towering glory to slow decline. From dramatic success to noisy frustration, Chamberlain's rise and fall mirrored that of his country.

Joseph Chamberlain was a product of the Industrial Revolution—almost literally. "As far back as the records go," writes Marsh, "the men in his family earned their living in businesses of the kind that gave rise to the Industrial Revolution." The grandson of a malt brewer, the son of a shoe-factory owner, himself a prosperous screw manufacturer, Chamberlain moved from the world of business to politics when he was 38 (with a fortune of around £120,000), becoming mayor of Birmingham. In two years he had established himself as the greatest mayor in all of England. From slum clearance and public hygiene to school reform and the founding of the University of Birmingham, Chamberlain never ceased to attend to his home town. "The monuments of the traditional elite are at Westminster," writes Mr. Marsh. "The memorials of Joseph Chamberlain are all over Birmingham."

An entrepreneur, he was an interloper in Britain's high politics, which had been—and remained—the preserve of landed elites. His politics were the product of his small-business past—Enlightenment liberalism and religious nonconformism. He added, however, a zealous concern for the welfare of the industrial working and middle classes with whom he had so much contact. This concern for the working man and woman he maintained throughout his career; on everything else he changed his mind. He began his national career as one of William Gladstone's purest free-traders; he ended it by resigning from Arthur Balfour's Conservative government because it was insufficiently enthusiastic about his scheme for "imperial preferences," a proposal to turn the British Empire into a protectionist trading bloc. As Churchill remarked, "An immense force was exerted with complete sincerity in different phases in opposite directions."

What explains this strange journey? It is not lack of intelligence, for Chamberlain was brilliant; nor lack of learning, for he read deeply and broadly; nor a casual political opportunism, for his patriotism was deep and real. The key to Chamberlain's conversion lies in his theory of British decline. By the early 1890s Joseph Chamberlain had come to recognize something that few British statesmen did, and this recognition changed his entire outlook on politics. He realized that Britain was in serious relative decline; while it was growing at a brisk enough pace to raise living standards, its growth was, in comparison to that of other large industrial countries (principally America and Germany) actually slowing down. More importantly, scientific and technological innovation, inventions and patents, the growth of new industries—all these were shifting across the Atlantic and the North Sea. Many free-traders refused to concede any problem, but Chamberlain understood that Britain had to do something or else it was destined to descend gradually from being the industrial superpower of the world to being a small island off the coast of Europe.

There ended his wisdom. Brilliant in diagnosing the problem, Chamberlain

Mr. Zakaria is managing edtior of Foreign Affairs.

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was not so farseeing in his solutions, which were either unfeasible or misguided. By the early twentieth century, imperial unity had become impossible; it would have required an element of coercion the British public neither wanted nor could afford. Even his proposal for common tariffs for all colonies and dominions failed to recognize that the dominions—Canada, Australia, South Africa, etc.—were emerging industrial nations in their own right. They would not accept a tariff system that locked them into selling cheap raw materials to the mother country and buying expensive finished goods from her.

Those solutions that were feasible ended up aggravating the very problems Chamberlain had identified. The oldest, most uncompetitive sectors of Britain's economy got the greatest protection from foreign competition. High taxation and elaborate subsidies further eroded the British spirit of enterprise so that Churchill would ruefully say in 1937, "We have reached the period when Joseph Chamberlain's main effort is triumphant. Great Britain has at last joined the rest of the world as a protectionist country. . . . The elaborate measure of social reform, the pensions and insurance systems which this country has seen created on this island, the high taxation of wealth enforced in different degrees all over the world but nowhere at such a pitch as in Great Britain [are all his legacy]."

After World War II these measures only intensified. In fact Britain's "solutions" for most of this century were tariffs, punitive taxation and regulation, and government by trade unionism. The country's leaders have generally chosen the Chamberlain route to "maintaining Britain's world position," i.e., dashing off to distant colonies, proposing new imperial schemes, and hosting Commonwealth conferences.

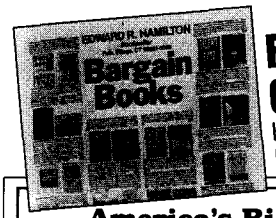
The fundamental solution to the problems Chamberlain diagnosed was to raise domestic productivity. This approach was proposed by one of the few people who agreed with Chamberlain's diagnosis (yet disagreed with his solutions), the eminent economist Alfred Marshall. In a memorandum to Prime Minister Balfour (quoted in Aaron Friedberg's splendid book, *The Weary Titan*), Marshall acknowledged that Britain had indeed declined in relative terms. This was, in part, unavoidable. New industrial nations rise and, coming from a lower base, can inevitably rise faster than mature economies. But part of the problem lay in Britain's own success. "The sons of the mid-century manufacturers had become content to follow mechanically the lead given by their fathers. They worked shorter hours, and they exerted themselves less to obtain new practical ideas than their fathers had done. And part of Britain's leadership was destroyed rapidly."

Marshall's solution was clear. If Britain hoped to retain a "high place in the world . . . everything [must] be done to increase the alertness of the industrial population in general and her manufacturers in particular." Exposing British industry to competition from the leading industrial nations—especially America and Germany—was "absolutely essential."

This analysis implied painful measures, requiring less government intervention in many areas but more in some—like keeping tariffs and taxation low, reducing government spending and regulation, increasing national savings, improving technical education, funding scientific research, making society more meritocratic. Much of British society, especially its elites, had been suspicious of the culture of capitalism. They believed in birthrights, not merit; land, not factories; classics, not engineering. The sons of the commercially successful, moreover, aped their values as they attempted to become proper gentlemen. Following Marshall's proposal would have required a social and cultural transformation, moving society back from the world of Evelyn Waugh to that of Adam Smith.

Chamberlain—and much of Britain—searched for an extravagant external fix to the problem of British decline. But the answer lay at home. Britain had become "the workshop of the world" in the eighteenth century because of the inventiveness, hard work, and frugality of its people, not its particular set of tariff policies. Empire was the result, not the cause, of Britain's greatness. Britain had spent time, money, and energy on pacifying, annexing, and governing vast stretches of land in Asia and Africa and, with the exception of India, gotten little from it in return.

The irony of Chamberlain's tale is that it was the entrepreneur who forgot about the importance of entrepre-



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neurship, the scion of the free-market revolution who became enamored of the power of the state, the skeptic of empire who was seduced by its brass bands and bayonets. He should have known better. If Joseph Chamberlain had worried more about the productivity of manufacturers in his beloved Birmingham and less about the constitutional arrangements of Dutch farmers in the southern Transvaal, Britain would have been better served.

Joseph Chamberlain died the week that Archduke Franz Ferdinand was assassinated in Sarajevo. With the First World War, Britain's slow slide from economic supremacy accelerated irrevocably. □

Plain(s) Talk, in Verse

JOHN SIMON

THERE ARE two foolproof ways of getting your unpublishable poetry published. One is to be some sort of irrelevant celebrity, e.g., movie star (Jimmy Stewart), wife of a famous aviator (Anne Morrow Lindbergh), or Pope (Karol Wojtyla, a/k/a John Paul II). If this route isn't available to you, try dual entitlement, such as being both black and female. This has worked wonders for the likes of Maya Angelou, June Jordan, Ntozake Shange, Alice Walker, and many others. I have a certain soft spot for Gwendolyn Brooks, however, if only for watching her pass out from the free fruit punch served at the White House on Poetry Day.

On that Poetry Day, I met Jimmy Carter, then merely President, but now peacemaker as well as published poet, Times Books having brought out *Always a Reckoning and Other Poems.* I wouldn't be surprised if he had discovered his published poet's mission on that very day, when in every room of the White House you could hear published poets spouting their verse, some of it respectable, some of it good only for eliciting the response, "Heavens to Betsy, I can write stuff as good as that!"

Always a Reckoning and Other Poems, by Jimmy Carter (Times, 130 pp., $18)

Jimmy Carter, as the author's note reminds us, has published other books, some in collaboration with his wife, but those were in prose. That was a smart move: no matter how bad prose is, it is still, as Molière's M. Jourdain discovered, prose. But bad poetry is not poetry; it is nothing. At most, some sort of text printed in short lines down the middle of each page. This has two seeming advantages: it *looks* like poetry, and it fills a book faster than stuff that has to cover the entire page. Moreover, in the old days, to impress folks, it had to adhere to strict form. Nowadays, however, thanks to the pioneering efforts of such stars as the poet-playwright Miss Shange, the poet-inauguralist Miss Angelou, and the poet-professor Miss Jordan (one of whose effusions begins: "5 shirts / 2 blouses / 3 pairs of jeans and the iron's on hot / for cotton"), a much greater freedom has been gained, making it easier for everyone.

So one of Jimmy Carter's poems starts out "in a musty attic box I found / letters of my family in the War— / from places like Bull Run and Gettysburg / and places seldom mentioned in the books." As you can see, this is not a laundry- (or ironing-) list poem, but a newer genre, the letters-in-the-attic-box poem, and just as potent. It even bears the vatic title "The More Things Change." The humble Civil War epistolarians "served a cause and often gave their lives / not knowing how to tell the history / they made, except a private's point of view / set down in a simple line or two." Clearly, the ancestors inspired our poet to tell the history he made, not from a private's but from a Commander-in-Chief's point of view, yet also set down in a simple line or two.

These forty-odd mostly short poems —only three of them longer than the two-page (prose) dedication to the poet's family, friends, and various unnamed people, including the "readers of this book"—fall into four sections: "People," "Places," "Politics," and "Private Lives." All these P-headed rubrics are very nearly interchangeable, most of the poems really being prosy anecdotes that could fit into several of the categories. There are reminiscences of growing up in Plains, Georgia; of friends black and white; of hunting and fishing; of growing peanuts, and harvesting and selling them; of family (father, mother, wife, but no offspring); of a favorite hound dying, "nose and eyes still holding on the point"; and of itinerant songsters coming to visit the village, after which "I wished to write / in fumbling lines why we should care / about a distant starving child."

There are also autobiographical poems about local politics and Washington, poems about travel in the air ("Flying to Japan and Seeing Mount Fuji Above the Clouds"), and undersea ("Life on a Killer Submarine"), where Carter served, and quite a few about people being exploited, abused, imprisoned, and killed in sundry parts of the world. There are poems about Mother Lillian's nursing career and treatment of a young leper, about Father Earl's severity, hunting prowess, and death by cancer; about not finding Dylan Thomas memorialized in Westminster Abbey, and doing something about it; about "One, Now Gone, Who Always Let His Hunting Partner Claim a Downed Bird" ("A rarity / who showed us what *agape* means"); also philosophical ones, e.g., "A Contemplation of What Has Been Created, and Why," and "Considering the Void" (which ends: "knowing that this galaxy of ours / is one of multitudes / in what we call the heavens, / it troubles me. It troubles me"); and one "On Using Words," which runs in toto:

I first heard jumbled sounds
before they framed my infant
thoughts
and didn't know beliefs and dreams
would ride on random consonants
and vowels in the air.

Now when I seek efficient words
to say what I believe is true
or have a dream I want to share
the vagueness is still there.

The terms that best describe these pieces are "anecdotal," "concerned," and "disarming." They testify to the niceness of a guy talking about people, issues, incidents from his life (e.g., bird watching from the White House roof), and there is hardly one among them that wouldn't appeal to the Nobel

Mr. Simon is NR*'s film critic.*

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Peace Prize jury, and not a single one that, in anything but superficies, resembles a poem. Here is a stanza from "Of Possum and Fatback," about possum hunting in Mr. Carter's youth:

Each man hoped to take one back
to put in his own kitchen pot.
The dog race was a real contest
since that was how good meals were got.
The top hound's family ate the best.
Fatback was the usual fare,
boiled for taste or fried for grease,
so wild game brought a welcome change
with cornpone, collard greens, and peas.

Possum hunting, then—along with the sight of geese flying in formation and the song of whales, a racist curse and a battle prayer—is among the "simple themes" Carter advocates, along with a pony, Mama as a nurse, and a postern gate. Thus "I learned from poetry that art / is best derived from artless things." Yet these artless things can also lead to overconfidence and a certain smugness (often disguised as false modesty), as when Mr. Carter listens to the advice of an old black female retainer who tells him "what she thought I ought to do / in Washington, where I was working then." How charmingly offhand and modest!

But omniscience will out, as in "Battle Prayer," which runs in its entirety:

All those at war
Pray to obtain
God's blessing.
It's with those in pain.

It may also be with those who know just where that blessing is. I, in my ignorance, would have guessed it was with those who, like a later President whose art is the saxophone, managed to elude the war altogether.

Unfortunately, there are no poems here welling up from that lust in the heart our poet confessed to in a *Playboy* interview. But there are three anodyne and uxorious love poems to his wife, Rosalynn, one of which ends: "With shyness gone and hair caressed with gray, / her smile still makes the birds forget to sing / and me to hear their song." A misdirected smile, I'd say; better it had encouraged the birds and made the bard forget to sing.

But perhaps one of the problems with this poetry is that it is as plain as Plains, Georgia. Modern poetry, as some celebrity bards have discovered, needs a bit of obscurity. Carter might consider the ending of a poem, "Girl Disappointed in Love," by the future Pope John Paul II: "The human heart—what is it for? / Cosmic temperature. Heart, Mercury." Now, that has the right quality of Vatican vaticination about it; it is not only pithy, it is also Pythian.

Still, such as they are, the poems in *Always a Reckoning* are vastly superior to the illustrations that accompany them, by an award-winning San Francisco high-school artist, Sarah Elizabeth Choldenko, whose drawings are two steps above stick figures. Her identity is revealed in a note about the author, described as "the proud grandfather of the illustrator." It is good to know that not only talent but also its opposite can be inherited and published. It widens the field. □

FILM

Providing for the Young

JOHN SIMON

HAVING more or less put aside childish things, I am not overfond of films for young people. Here, however, are three worth commending. True, when a movie calls itself ***Rudyard Kipling's The Jungle Book***, you can be reasonably sure it will have as little to do with Kipling as *Mary Shelley's Frankenstein* had to do with Mary Shelley. So *The Jungle Book* becomes a love story between Mowgli, the jungle boy, and Kitty, the daughter of the commander of the army post from which the boy had vanished as a child. Still, if a film has a romance between a girl brought up by the highest Victorian standards and a boy brought up by wolves; a buried treasure city to which evil English subalterns want Mowgli to lead them before they kill him; wonderful animals (awesome tiger, comical ape, scampering wolves, endless serpent); and racy location photography, only a curmud-

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geon would carp about not getting much Kipling.

And if there's no Kipling, there's the next-best thing: John Cleese bumbling as blitheringly as ever. Besides, Kipling's jungle always seemed to me more ecumenical than most, blithely containing fauna from diverse continents. Then why not also clichés from all over? The story scrambles along scrappily under Stephen Sommers's workmanlike direction, and India, jungles and all, looks as photogenic as ever. Jason Scott Lee may be ethnically unconvincing as Mowgli, but otherwise winning enough, and Lena Headey is the most endearingly spunky of Victorian young ladies, Indian division.

■ From France comes another juvenile classic, ***Queen Margot***, by Alexandre Dumas, this one for youths old enough to enjoy Isabelle Adjani's portrayal of Marguerite of Valois as a noble nymphomaniac, and who are not put off by a St. Bartholomew's massacre that leaves little to the imagination. They may, to be sure, find the intrigues of sixteenth-century French history somewhat hard to follow, especially since the Miramax Films bosses, who wield scissors as rapturously as any French hairdresser, have snipped twenty-odd minutes from this admittedly long film. But aren't epics supposed to be long?

Anyhow, quite enough skulduggery, swashbuckling, sex, and heartbreak remain to keep most young and many older viewers cheering. Mlle Adjani, at 39, is as pretty and pouty as ever, treading the borderline between provocative and provoking with her customary nimbleness. And she does *act*, as does the entire cast, with enthusiasm and an aristocratic contempt for bourgeois restraint. Daniel Auteuil is a nervily earthy Henri IV; Jean-Hugues Anglade, a wonderfully weak and confused Charles IX; Vincent Perez, a handsome and virile leading man; and Virna Lisi, a vicious Catherine de' Medici luckily without a mustache, else she would be twirling it.

Patrice Chéreau, the director, is better known for his unconventional work in theater and opera, but except for a certain lack of perspicuity (perhaps due to the aforementioned Miramax scissors) acquits himself compellingly. The film's great glory is the cinematography of Philippe Rousselot, perfect in his American movies, and even better in this French one. He visually echoes the very painters we would have wanted to paint this chapter of French history (and pseudo-history): Géricault, Chassériau, and Delacroix. *Queen Margot* is a film that could subsist on its camera work alone, though castles, costumes, boar hunts, and massacres also contribute generously.

■ Finally, an American classic: ***Little Women***. This is the fourth filmed avatar of Louisa May Alcott's hearty perennial, and except for the absence of Katharine Hepburn, the best yet. Appropriately directed by a woman—albeit an Australian—Gillian Armstrong, it has a nice, tactile, lived-in feel, with clothes, furniture, and faces good enough to make you want to run your hands over them. The touted screenplay by Robin Swicord, which allegedly brings in ample references to the times (Civil War, transcendentalism), does very little of that. Just as well; we don't want Whitman and Emerson poking around in our Alcott.

We get such pleasing presences as Susan Sarandon's Marmee, John Neville's Mr. Laurence, the long-missed Mary Wickes's Aunt March, and all the girls, especially the Jo of Winona Ryder, and the young Amy of Kirsten Dunst. The others hold their own, even if Gabriel Byrne is an unlikely Central European. Miss Ryder, at one point, refers to a novel by Dickens as *Dombey and Sons*, no doubt assuming it to be the tale of a good father and his four darling boys. □

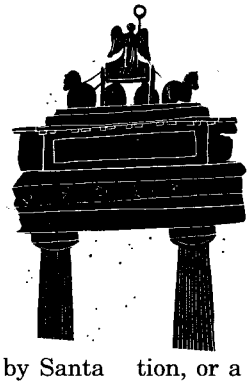
DELECTATIONS

In Vino Delectatio

LINDA BRIDGES

FRIENDS in California tell me that aficionados of Pahlmeyer, a Napa Valley Chardonnay, are downcast at the way it was used in *Disclosure*. It's sure to become even harder to find than it already was, and the price is likely to go up as well.

Too true. A few years ago another Chardonnay—La Forêt, a Burgundy put out by Joseph Drouhin—was featured in *Babette's Feast*. Result: two months of unavailability, followed by six months of elevated prices.



Sometimes, of course, the increased demand is caused quite deliberately. It's called advertising, and assuming the product is good to start with, it works, as evidenced by Santa Margherita. This wine used to cost about the same as other Pinot Grigios of comparable quality; in Italy it still does. But in this country it goes for about one-third more than it "should," because more people now recognize its name.

These are the exceptions to the wine buyer's rule that you get what you pay for—or, as James Burnham's Third Law has it: "Just as good, isn't." One day a colleague and I were talking about a dinner we had both attended the night before. "I liked the white wine rather better than the red," he said. No surprise, said I. The red was a Chianti made by Ruffino, but Ruffino makes at least four grades of Chianti, ranging from one that sells hereabouts for around $7 a bottle retail, up to the gold-label Riserva Ducale, which sells for around $25 a bottle. The red served at this dinner was the $7 one—whereas the white was Ladoucette, a very nice Pouilly Fumé that retails for about $17 a bottle.

The trick for the person who wants to serve wine with dinner every night (or indeed for a special celebration, or a nefarious purpose like Demi Moore's) is to figure out the point at which pleasure and pocketbook intersect—and also to realize that even if you were as rich as Taki, it would be pointless to serve, say, Bâtard-Montrachet with a dish like spaghetti puttanesca, full of anchovies and olives, or Lafite-Rothschild with chili con carne. (Although I was once served Lafite with a hot dog, but that's another story.) (They went together surprisingly well.)

The idea of wine as a normal part of a meal came late to this country (apart

Miss Bridges is NR*'s managing editor.*

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from two quite different subgroups, the old-money families whose cellars survived Prohibition; and those who had come over from wine-drinking countries, especially Italy). As in most areas in which there is a substantial body of tradition—from English grammar to etiquette to *haute cuisine*—the newcomer is torn between the desire to know what is correct, and an impatience with standards that may seem fussy and artificial. Indeed, even people fully raised in the tradition can cease to care, as an elderly lawyer laments in a John Dickson Carr novel from the Twenties:

> "Nowadays they cannot tell Chambertin from Sauternes," said Kilard. "They will drink Champagne from a bottle with a soft cork, and decant Port as you would pour out water, without attention to the sediment. Zut! It is blasphemy! They will serve Chablis with anything but the oysters, and I say to you, messieurs, that a host who would offer Médoc instead of Burgundy with the game should be shot without mer— I ask your pardon, messieurs! I digress."

Shooting may be casting it a bit high, but still, one probably ought to know what Western civilization has thought before deciding that one's tastes are different.

That said, some people are still going to have a general preference for Cabernets over Pinot Noirs, and others, otherwise. But the only way a novice wine drinker will find out which sort he is is to keep trying different wines until his own palate knows what it's looking for. And the best way is to try them as part of a meal. As the founder of this column, Nika Hazelton, used to point out, wines that win competitions don't always go that well with food—they can be too assertive and aloof. Also, wine tastings have certain dangers for the incautious. Remember the scene in *Brideshead Revisited* where Charles and Sebastian are methodically working their way through Brideshead's cellar?

> We would sit, he and I, in the Painted Parlor with three bottles open on the table and three glasses before each of us; Sebastian had found a book on wine-tasting, and we followed its instructions in detail. . . . Then we talked of [the first wine] and nibbled Bath Oliver biscuits, and passed on to another wine; then back to the first, then on to another, until all three were in circulation and the order of glasses got confused, and we fell out over which was which, . . . and the bottles were empty and our praise of them wilder and more exotic.
>
> "It is a little, shy wine like a gazelle."
>
> "Like a leprechaun."
>
> "Dappled, in a tapestry meadow."
>
> "Like a flute by still water."
>
> ". . . And this is a wise old wine."
>
> "A prophet in a cave."
>
> ". . . And this is a necklace of pearls on a white neck."
>
> "Like a swan."
>
> "Like the last unicorn."

As Nick Clarke put it in *The Bluffer's Guide to Wine*, "This tome is respectfully dedicated to the large lady who stampeded an entire herd of Old Etonian wine merchants by describing an inoffensive Moselle as 'tender, without being mawkish.'" For that too is what you're buying with your $7 or $17 or $75: a part of a tradition which has, to be sure, its silly moments, but which tries to find the words to pay tribute to a craft that often approaches an art. An art we can enjoy every day. □

BOOKS IN BRIEF

The Death of Common Sense: How Law Is Suffocating America, by Philip K. Howard (Random, 187 pp., $18)

STEADY readers of NATIONAL REVIEW will not be startled by the disturbing stories of government senselessness that Philip Howard has stuffed into this readable little book. You already know about the volumes of regulations that serve no purpose other than to embolden bureaucrats and hinder businessmen. You will not be surprised to hear that OSHA is more concerned with railing heights at a perfectly safe brick-making factory than with vats of poisonous blood that kill workers at a meat-packing plant. The spirit of the book is outrage. Faced with a staggering mass of evidence of government tyranny, Mr. Howard harks back to the days when government did things quickly and grandly, and nobody asked any questions. "Perhaps the greatest testimony to their accomplishments," Howard writes of such New Dealers as Ickes, Tugwell, Hopkins, and Corcoran, "is that we still remember their names." Mr. Howard should be praised for his assiduous research and lively prose. His New Deal reverie we can do without.

—GEOFFREY MORRIS

Good Order: Right Answers to Contemporary Questions, edited by Brad Miner (Touchstone, 304 pp., $15)

AN ANTHOLOGY of "conservative essays, some actually written by conservatives," this book is a showcase for fine writing on questions of crucial relevance, as it leads the reader through "Spiritual, Social, Economic, Political, and Cultural Orders." In his contribution, the late Allan Bloom wrote, "Contrary to the popular prejudice that America is the nation of . . . anti-intellectual people, where ideas are at best means to ends, America is actually nothing but a great stage on which theories have been played." Which is to say, ideas matter. This is the most important lesson one takes from the essays, contributions to serious thought on what is and should be, by writers including Peter Kreeft, Charles Murray, and Thomas Sowell. In his introduction, Mr. Miner, a former *NR* literary editor, despairs of the term "conservative," writing: "We need a word that captures not only conservatism's scruples but also its ethics." Good Order, two words, does this.

—DANIELLE ALLEN

Witches and Jesuits: Shakespeare's Macbeth, by Garry Wills (Oxford, 224 pp., $19.95)

ORIGINALLY presented as a series of lectures at the New York Public Library, *Witches and Jesuits* is mainly a cultural history of Shakespeare's *Macbeth*. Proceeding like a painstaking micrologist climbing around on Shakespearean monuments, Wills attempts to document some particular ways in which Shakespeare's "general aim is to make contemporary excitement work to the advantage of his art." The contemporary excitement in the case of *Macbeth*, we are instructed, is the Gunpowder Plot of 1605, when Catholic conspirators failed in their attempt to blow up James I and his entire Parliament. Referencing the Plot, one might say, is the be-all and end-all of Wills's interpretation as he parades the worst vices of cultural studies—triviality and historicism. For such a small book, it contains an enormous amount of useless information. When Garry Wills is done, there is little left of the true monumental Shakespeare.

—PETER WELSH

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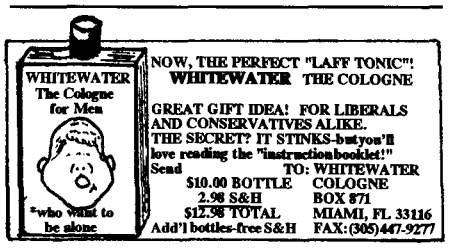
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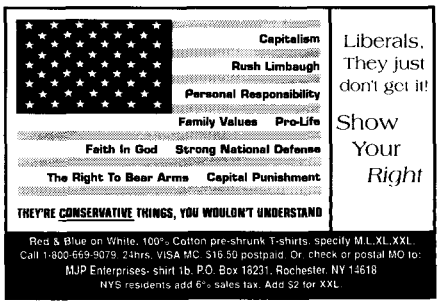
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REYNOLDS

(Continued from page 56)

protect prisoners' rights, Congress should amend or repeal this "civil rights" law so that no prisoner lawsuit that can be raised in state courts is permitted in federal courts. The Supreme Court can hear prisoner appeals from the highest state court only.

Title VIII broadens the definition of an "aggravated felony" and proposes new procedures to speed up the deportation of criminal aliens. At least these reforms clearly fall within federal authority.

Title IX amends the Clinton crime bill to eliminate money for "drug courts" and "social prevention" programs. This is a start, but why not repeal the whole Clinton bill instead and start over with the proper objectives? The unfortunate answer is that there was never more than a dime's worth of difference between Republicans and Democrats on last year's crime bill.

The conference-committee report on the Clinton crime bill argued that "individual states and localities find it impossible to handle the problem by themselves" and that "Congress finds that it is necessary and proper to assist the states in controlling crime." This is the sort of imperial baloney that voters rejected in November, but the Republican bill seems to be based on the same premise.

The new Congress should decentralize decisions on crime. It can do so by repealing both the entire Clinton Crime Control Act of 1994 and the Brady Gun Control Law. Then it should repeal the federal *habeas corpus* procedure, subsidies for death-penalty appeal centers, and the legal authority for state prisoners to pursue lawsuits willy-nilly in federal courts.

After that, Congress can get more revolutionary. □

MARTINO

(Continued from page 32)

Scalfaro is a man of the old establishment, who has been in politics for nearly half a century and views the disappearance of the old order and of his own political party (the Christian Democrats) with dismay. Had elections been held soon, FI and its allies would have had a landslide victory. The opinion polls indicated that between 50 and 60 per cent of the electorate would have voted for them. In terms of parliamentary seats, this would have meant such a comfortable majority that for the first time since 1972 Italy would have been spared an early dissolution of Parliament. In five years, our program of radical free-market reforms could have been largely implemented.

So, with the justification that having elections for the second time in one year was "traumatic," that financial markets had to be appeased by a period of stability, and that the level of political confrontation had to be toned down, President Scalfaro convinced Berlusconi to accept a period of "truce," with a government headed by Mr. Dini (who, after all, had been his treasury minister, though not a member of FI) and composed of "experts."

Sound familiar? After successful coups, the winners claim that the interruption of democracy is temporary and that, as the government and its experts repair the damage done by the previous democratic government, new elections will be held and the democratic process restored. In both cases (such a coup and Mr. Scalfaro's decision) there is the notion that, every now and then, democracy needs a break; in both cases, there is the implicit assumption that there are impartial "experts" who know the right solution for each and every problem—a solution which every reasonable man will immediately accept. In the case of the present government, the definition of "expert" is illustrated by the following case. The new minister of finance and his predecessor are both professors of tax law; they both ran for Parliament in the same political party; the old one was elected, the new one was not. The defeated was asked to replace the successful. If you want to be considered an expert in Italy, lose an election.

On January 25, the government received a vote of confidence in the Chamber of Deputies with the following tally: 39 (the unreconstructed Communists) voted against, 19 didn't show up, 270 (FI and its allies) abstained, 302 (the League and the Left) voted in favor. It is a minority government, existing only because FI and its allies abstained. Its inspiration is, paradoxically, even more right-wing than that of the previous government (hence our abstaining rather than voting against)—and it is a delightful paradox to see the Left vote in favor of it. Its program is limited to four points: new rules for political propaganda on TV, a new law for local elections, a small correction of the budget law, and the reform of the pension system. This last point is so grandiose and controversial that it is highly unlikely that it can be implemented in the short run by such a weak government. The other three, meanwhile, are so limited that they could be completed in a couple of weeks. Mr. Dini has promised to quit as soon as he has completed this four-point program or as soon as he realizes that Parliament won't allow him to do so. Will he keep his word? And, if he does, will Scalfaro call for new elections? It's impossible to answer these questions at this point, but, unless something unforeseen happens (which, unfortunately, is the norm in Italy), it's possible that after the next elections we'll finally have a stable, decent, and conservative government. Something we have been eagerly hoping for since 1876. □

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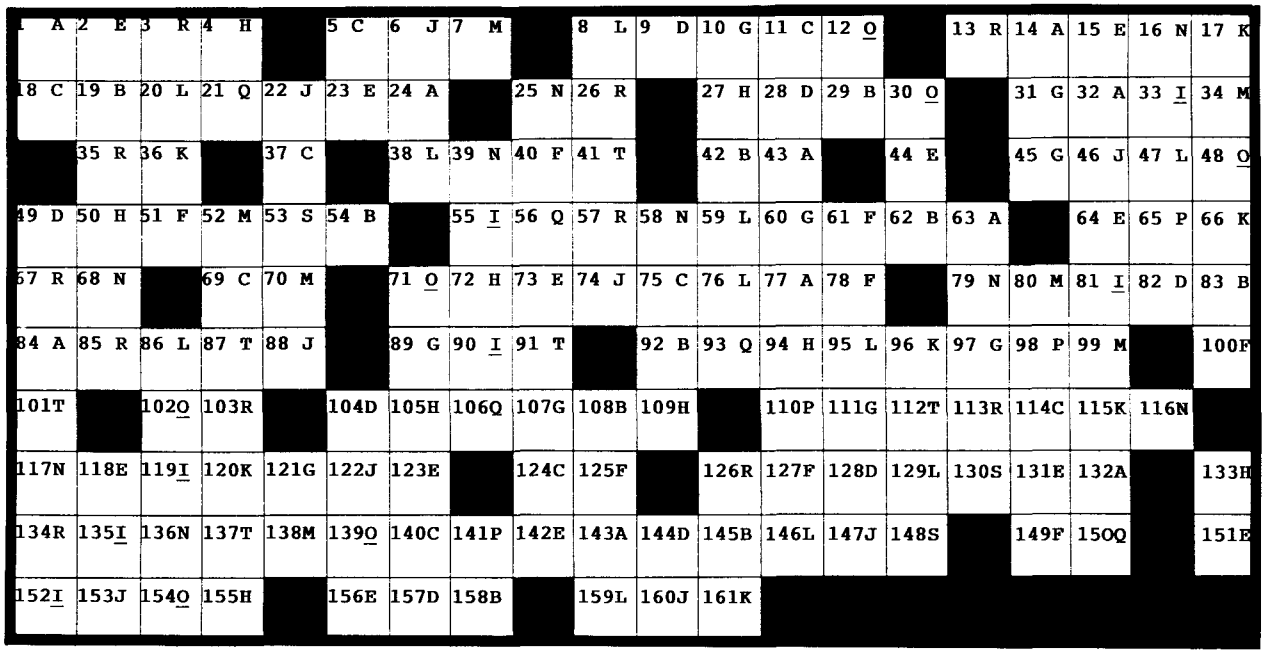
TRANS-O-GRAM / Kem Putney



DEFINITIONS

A. Captain Cook's other island (2 words) — 43 32 1 143 24 77 132 84 14 63

B. Cowboy, at times — 62 92 19 108 158 145 83 42 29 54

C. At home on land or in the water — 140 11 18 114 75 124 69 37 5

D. Like the well-run steed — 104 144 157 28 82 49 9 128

E. Where eagles fly—and run — 64 2 156 123 131 15 73 23 151 118 142 44

F. Rudimentary — 100 78 40 61 149 127 51 125

G. Cake ingredient (2 words) — 121 107 45 31 111 97 89 10 60

H. Dutch seaport — 109 105 27 4 94 155 133 50 72

I. New England dish — 135 90 152 55 81 119 33

J. Freedom to maneuver (2 words) — 46 122 22 160 153 74 147 6 88

K. Chubby Checker weather phenomenon — 36 161 66 17 96 115 120

L. Courtroom grandstanding — 159 86 95 20 59 146 38 47 129 76 8

M. Twist together — 80 70 138 7 52 99 34

N. Wife of Amenhotep IV — 39 58 79 136 116 68 16 117 25

O. Serious — 48 71 139 102 154 12 30

P. Ovine product — 110 98 65 141

Q. Flora's pal — 150 56 93 106 21

R. Changes — 35 85 57 134 126 3 113 13 103 67 26

S. Unsavory type of game, or man — 130 53 148

T. Jewish brotherhood — 112 101 87 91 137 41

DIRECTIONS

The object of TRANS-O-GRAM is to fill in the puzzle diagram by guessing the words from their definitions, and transferring each letter of the guessed word to the correspondingly numbered square in the diagram. When the diagram is filled in it will spell out a quotation from some published work (reading normally from left to right, black boxes indicating the ends of words); also, when the words have all been filled in above, their initial letters will spell out the author and title of the quoted work. The acrostic feature, and the relative word-lengths in the diagram, will assist in the solution. Spelling and definitions on the authority of *Webster's Deluxe Unabridged Dictionary*, Second Edition.

Solution to Last Issue's Trans-O-Gram. TED TURNER: *Hey! Can We Talk?*: "When I married Jane, I was really marrying the women's movement. I'm sure my father—God rest his chauvinistic soul—was rolling around in his grave . . . But I never met a woman I didn't like. No woman was ever mean to me and a lot of men were!"

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Abortion: The Two Sides Gear Up

NEW YORK, JANUARY 24

The abortion controversy moves quickly to another set of planes. A few months ago it was the general understanding that American voters had spoken on the subject and that from now on abortions would be, with here and there a constraint or two, as available as tonsillectomies. But what happened in November was the election of over forty new legislators who either believe that abortion is fundamentally wrong and immoral, or else believe that if the voters of a state wish it, qualifications for an abortion should be selective, and that on no account should abortions be used as a handy means of birth control or of assuring the birth of the desired sex. A second development is the nature and the force of the protestors.

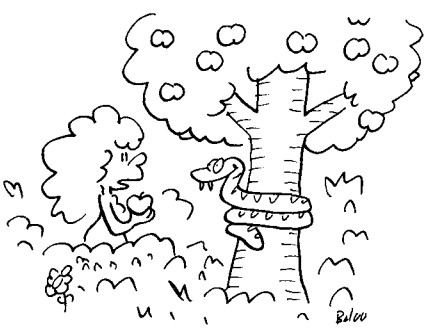
In this space a few weeks ago I wrote that no leader of the pro-life movement defended the murders committed by Paul Hill and John Salvi. I am required to qualify that statement. Mrs. Dawn Marie Stover has protested abortion, under the auspices of Operation Rescue and of Advocates for Life Ministries. She is not a learned woman, commands no legions, yet in a recent forum on the subject of abortion protests—"Licit and Illicit"—she appeared as a representative of the militant movement and was accepted in that capacity. She is the mother of four children; at age 15 she aborted what would have been her first child, and evidently seeks to redress that wrong. How? Among other things, by averring that she will not disavow Paul Hill.

Mrs. Stover does not make distinctions lucidly, but one gathers that she simultaneously regrets that the abortionist and his driver were killed, but refuses to say that Mr. Hill was wrong to kill them. Her reasoning is that the laws of God and country give the right to kill in self-defense, and that since six-month-old fetuses don't have the capacity to defend themselves, it is just that surrogates should accept that responsibility.

This analysis brought a thundering dismissal from Father Richard John Neuhaus, who spoke on behalf of God by observing that it is nowhere excused in Christian theology to kill with the intent to kill, and that since the mothers waiting in line for an abortion by the slain doctor were left free to engage the services of other abortionists, it cannot even be maintained that Paul Hill saved the life of a single fetus. On the legal question, there is no right by anyone with the exception of a state executioner to kill except in self-defense, and there was nobody on the scene who had approached Paul Hill, weapon in hand, clearly intending to kill him. So much for Mrs. Stover.

But in the meantime, other arguments were being made. It was generally understood that Cardinal Law of Boston had in effect counseled the pro-life protestors to step back this side of the militancy they had been showing. Cardinal O'Connor of New York would not go that far, enjoining his knights to go to the limits of the law. What, then, *are* the limits of the law, and what protections are justified for the pro-abortion front?

Attorney General Janet Reno, Fr. Neuhaus complained, has more or less announced that the Justice Department is going to tape the conversations, and perhaps open the mail, of men and women who give evidence that they are bent on terrorist assaults on abortionists. But such activity would seem entirely proper, provided that due process is observed. This means that before a line is tapped, a petition must be presented to the court to authorize this apparent infringement of the Fourth Amendment. If Mr. Hill's conversation disclosing his intentions to kill had been overheard, his crime might have been averted.



"'Situation ethics,' you say?"

But we are indeed left without a crystallized line that protects on the one hand the right of free assembly, and on the other hand the right of women to exercise what the Court has pronounced to be a constitutional guarantee. And it is certainly true that organized judicial machinery is mobilized more on the side of abortion than on the side of the protestors, roughly the opposite of the alignment of forces during the civil-rights struggles. After the forum was completed, Fr. Neuhaus pondered the point that the prosecution in Los Angeles announced that it would not seek the death penalty for O. J. Simpson, while in Florida, the prosecutor announced that he *would* seek the death penalty for Paul Hill. "One wonders," Fr. Neuhaus paused, "what would the prosecutor have called for if O. J. Simpson had murdered an abortionist?" □

Kemplore

NEW YORK, JANUARY 13

At this writing it is not known whether Jack Kemp will run for President. These words are not designed to give him, or the voters in Iowa and New Hampshire, authoritative advice on the question. They are intended to salute a wonder of the world, which is Jack Kemp's polemical gifts.

A few days ago I was exposed to him on four consecutive television programs, two of them dealing with the Federal Reserve Board's policies, the others with tax-reform proposals. Other panelists were distinguished analysts and there were many points of disagreement, but it isn't unfair to say that the preternatural enthusiasm of Jack Kemp for his positions and his quite extraordinary resourcefulness were the most memorable deposit of the four hours.

Presidential candidate Phil Gramm confided to a friend that Jack Kemp was wonderful, but there was this problem, that Kemp attached all his hopes to growth. He meant Kemp's soaring optimism about what would happen, most emphatically to the underclass, as a result of getting the government off the backs of its citizens. When asked to compare the merits of the Clinton tax plan, the Gephardt plan, the Gingrich and the Gramm plans, Kemp asked, Why were we not considering the Armey plan? The Armey plan is the flat-tax plan. Well, says Kemp, suggesting that he is embar-

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rassed by his forthcoming capitulation to populist disposition, well, maybe we can't begin it at 17 per cent. But why not 18? Or even 19 per cent?

The Armey proposal would exempt a family of four earning $36,800 or less from paying *any* federal income tax. After that, everyone would pay 17 per cent. All other hedges and exemptions would disappear, whence "flat" tax. The revenue that would then accumulate would equal what is now brought in under a tax law that fills seven volumes with its regulations, exemptions, immunities, and complications. The advantages reach beyond the prospective joy of making out one's income-tax return on a single sheet of paper. The advantage, Kemp reminds us, is the disappearance of progressive rates of taxation, which have the effect of dulling enterprise and directing investment toward tax avoidance, rather than productivity.

It all sounds very much, one panelist observed, like supply-side economics.

Look, said Kemp eagerly, you were in favor of GATT, weren't you?

Well, yes, sure, of course.

Well, Lloyd Bentsen was Treasury secretary when the GATT vote came around, and he said, Lower the tariffs, and we will have *more* not *less* trade. And early figures confirm that. Well now, a tariff is a tax, isn't it? So here was Clinton's Treasury secretary saying, Lower that tax and revenues will increase. What's the difference between that tax and other taxes? If you believe in free trade, don't you believe in supply side on that front? Why is that sound thought but unsound thought on other fronts?

The night before, Kemp had been in Jerusalem. He reported on the hunger of young Israelis for relief from the heavy load of taxation. He visited, en route, with President Vaçlav Havel of the Czech Republic. He had been asked whether that republic—enjoying a mounting prosperity, unlike its sister states with their sclerotic tax laws—would promulgate a capital-gains tax. Havel smiled and said to Kemp, No, he did not desire to imitate those practices of the United States which were bad. As for the Fed, it is wrong in imposing interest rates that will prevent economic energy from rising to a higher level.

Yes, he talks too much. What comes after a speech by Hubert Humphrey on Saturday night? Walter Mondale once quipped. "Sunday." At least as much can be said of Bill Clinton, the man who almost stopped the Democratic Convention in Atlanta in 1988 by his longwindedness. But when Kemp does it one isn't left with the feeling that megalomania is out running around the track. He communicates an enthusiasm for his enterprise which is nourished by hard application of his mind to the factual and theoretical bases of—freedom, no less. Jack Kemp is himself a wonderfully nourishing experience. □

Viva Mexico?

NEW YORK, JANUARY 20

During the extensive debates on Marshall Plan aid the senator from Missouri rose with what came to be known as the Kem Amendment. It stipulated that no U.S. aid could be sent to any country engaged in trade with the Soviet Union. This would have meant, just to begin with, the exclusion of Great Britain. There was a great uproar. Opponents attacked this as rank political chauvinism. For all that Great Britain was on its knees, it was nevertheless entitled to chart its own destiny. Kem and his supporters replied that, yes, it was the business of Parliament to decide in what direction to go, but that the United States Treasury was not bound to finance the resuscitation of the Soviet Union.

Well, the Marshall Plan carried, and within a year or two the government of Clement Attlee was ousted by the opposition, led by Winston Churchill. Economic policy angled over to the right, though it did not reach full stride until Mrs. Thatcher came in, 28 years later.

What is crystallizing in Congress in discussions of Mexico is very close to the same old argument. There are two important differences. One is that Mexico is not a country exhausted by a long war in which we were a later arrival. The second is that whatever happened within Britain could not have pressed directly on the U.S. inasmuch as we have between us an Atlantic Ocean, while between Mexico and the U.S. there is only the Rio Grande.

Now enthusiasts for Mr. Clinton's Marshall Plan for Mexico are absolutely correct when they say that the United States simply cannot isolate itself from the effects of an economic earthquake. Governor George Wallace attracted much attention when during the civil-rights demonstrations in the Sixties he announced that protestors who lay across the road to deter state trucks he could easily handle by simply instructing the truck drivers to continue in motion. His statement got him the cocky admiration he looked for, but a chill set in among even those opposed to civil disobedience. The feeling was that some things simply aren't done. The difficulty of guarding a frontier was raised to high visibility in fiction by Jean Raspail's *The Camp of the Saints*, in 1975. There the scene was of the imminent arrival of tens of thousands of boatloads of Indian refugees in France. What would France do about the problem? Deal with the refugees as the Germans dealt with the Allies on D-Day?

Not only did Mr. Clinton evoke the spectacle of tens and even hundreds of thousands of Mexicans swamping the border. He spoke of the possibility of a worldwide economic collapse. There is, obviously, no way in which the United States would escape the consequences of a worldwide depression. If nobody out there has money to buy things, what would Americans who produce for foreign consumption do?

Now there are the usual problems with Clinton. For one, nobody really believes him, or is even certain that he believes his own caterwauling. But what truly dismays is the surprise by which we were all taken. You cannot reasonably blame Japanese geologists for their failure a week or two before the event to warn of an impending earthquake centered in Kobe. But why should the economic world, with all its trained observers, have failed to notice the danger signals in Mexico? Why should it require more than one Apple computer to deduce that an economy in which savings had dipped by 50 per cent, whose government was churning out paper currency, whose population was glutted with credit-card purchases, whose foreign investment had quadrupled, was—in trouble.

Then there is the deep resentment of the snake-oil Clinton, telling us that the whole Rescue Mexico venture would not result in a dime's cost to the U.S. taxpayer. And then they ask, not unreasonably, In behalf of whom are we really making this sacrifice? Sure, to save Mexico. But saving Mexico means guaranteeing the banks and foreign investors the integrity of their portfolios. There is no general appetite to back up loans made to Mexico by high-rolling lenders. And yet there is no mechanism for doing the one without doing the other.

Modern Mexico is a proud country. It made just about every wrong step conceivable since its bloody beginning in 1929. In recent years, under President Salinas, it was beginning to come to life. But instead of breathing freely, it went on to take artificial respiration. How much gasping will Mexico have to go through to achieve normal metabolism, and what is the job of government, other than staying out of the way? □

(Universal Press Syndicate)

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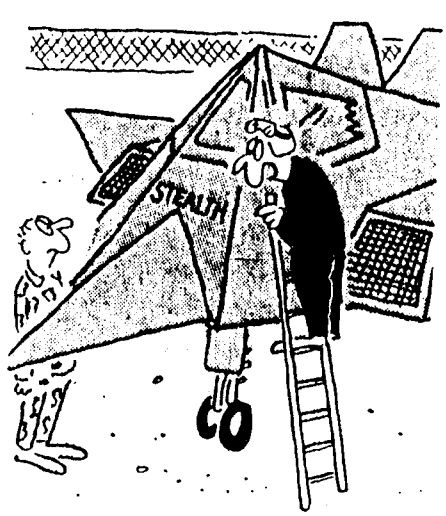
'Cigars . . . Cigarettes'

I SPEAK of tobacco with the wisdom of hindsight, through the clarifying distance of time, for it is now, as I write, nearly 36 hours since I quit smoking. Any smoker will tell you that 36 hours without tobacco is an eternity. And I am beginning myself to feel like Father Time, stooped and brittle-boned, slow-witted and dim. But I won't bore you with that; quitting smoking and its attendant discomforts have become the lamest of clichés, fodder for any columnist with nothing else to write about. So not a word from me about the terrifying hell of an ex-smoker's life, the scorched nervous system, the spastic insides, the irrefutable conviction that a small, hairless animal is clawing his way through one's body cavity. About all this—about the night sweats, the trembling fingers, the generalized despair, the endlessly repeated foreshadowings of doom, the obsessive self-pity—I remain silent. Mum's the word.

Tobacco is my topic today because it has been much in the news—and not only because I myself am suffering from withdrawal, with the optical illusions, the lightheadedness, the loss of motor control, the contempt for anyone and anything not directly related to the cultivation, curing, and marketing of tobacco. Beyond that—beyond my tingling scalp, the flashes of fever (I'll stop!)—the newspapers have announced that cigars are making a comeback. This is real news, classically defined; it is information genuinely new and unexpected. Total cigar sales were up 5 per cent last year; sales of expensive cigars were up 30 per cent or more. The "Health" section of the *Washington Post*, in keeping with its general mission of party poopery, calls this upswing "worrisome." It is, in other words, delightful news.

And in truth I shouldn't be surprised. There have been signs of this resurgence, here and there. Suddenly the most popular Washington restaurants are steakhouses, where they offer red meat by the pound and serve cocktails in tankards. All accommodate tobacco lovers, including cigar smokers; some managers even let it be known that they prefer customers who enjoy a good smoke to those who don't. Lafayette Square, across from the White House, will be the site of a "smoke-in" next month, and several local clubs have hosted "smokers," in which members pay sizable fees to eat well, drink lots, and smoke in peace. This is how far the trend has gone: a group of children's charities in Washington now puts on a spectacularly successful event called "Fight Night," the two chief attractions of which are a series of prize-fights and the opportunity to smoke cigars free of harassment.

The party poopers are right to worry, I hope. Though I have forsworn tobacco myself—and am even now suffering sporadic dizziness, fits of temper, occasional dyspepsia, and much else as if you didn't know—I cherish the act of smoking and am heartened by its renewed popularity. The trend is a swipe at all Health Nazis, part of what commentators are already calling a nationwide "conservative renaissance," and hence deserves encouragement. But I have some reservations, born of experience.



"It's the only place you can smoke without being detected."

As it happens, I attended Washington's "Fight Night," and it was in many ways an inspiring evening. The steaks were thick and rare. The drinks were poured free hand. The hostesses sold Upmans from a tray and then, smiling shyly, clipped them for the male customers, with a blithe indifference to Freud. The men wore tuxedos, and the party had a vintage feel to it, as if our grandfathers could descend through the clouds of cigar smoke and feel right at home.

BUT as you walked around the ballroom you couldn't shake the feeling: this is too self-conscious. The partygoers were baby-boomers mostly, fruit of the Sixties and early Seventies; and for a generation that has passed through one health craze after another, an evening of heavy smoking and drinking can only be ersatz. You saw it as the gents handled their cigars. Quizzical looks passed from face to face: does one grip it between the index and second fingers, or twist it between the four fingers and the thumb? Coughing echoed round the room, as some fellows mistakenly inhaled. By evening's end the ashtrays overflowed with five-dollar Churchills, barely smoked. The verdict was unspoken but universal: These taste yucky.

I know: now I sound like the party pooper. Maybe my skepticism is just another symptom of withdrawal, like these ringing ears and the dull pain at the base of my neck, which I won't bore you with. And I did admire the effort the gents put forth at "Fight Night." But their hearts clearly weren't in it. They reminded me of those moderate Republicans we see on Capitol Hill these days, the Gundersons and Kassebaums, who speak confidently of balancing budgets and shrinking government and eliminating programs—"the tough decisions"! They too are part of the nationwide trend. But what will happen when time comes finally to eliminate a program, like (shall we say) PBS? What happens to the conservative renaissance then? I can only guess; but my hunch is that many Republicans will try it for a while, as one does with trends, and then deliver the dismal verdict: This is yucky.

—ANDREW FERGUSON

Mr. Ferguson is a senior writer for The Washingtonian.

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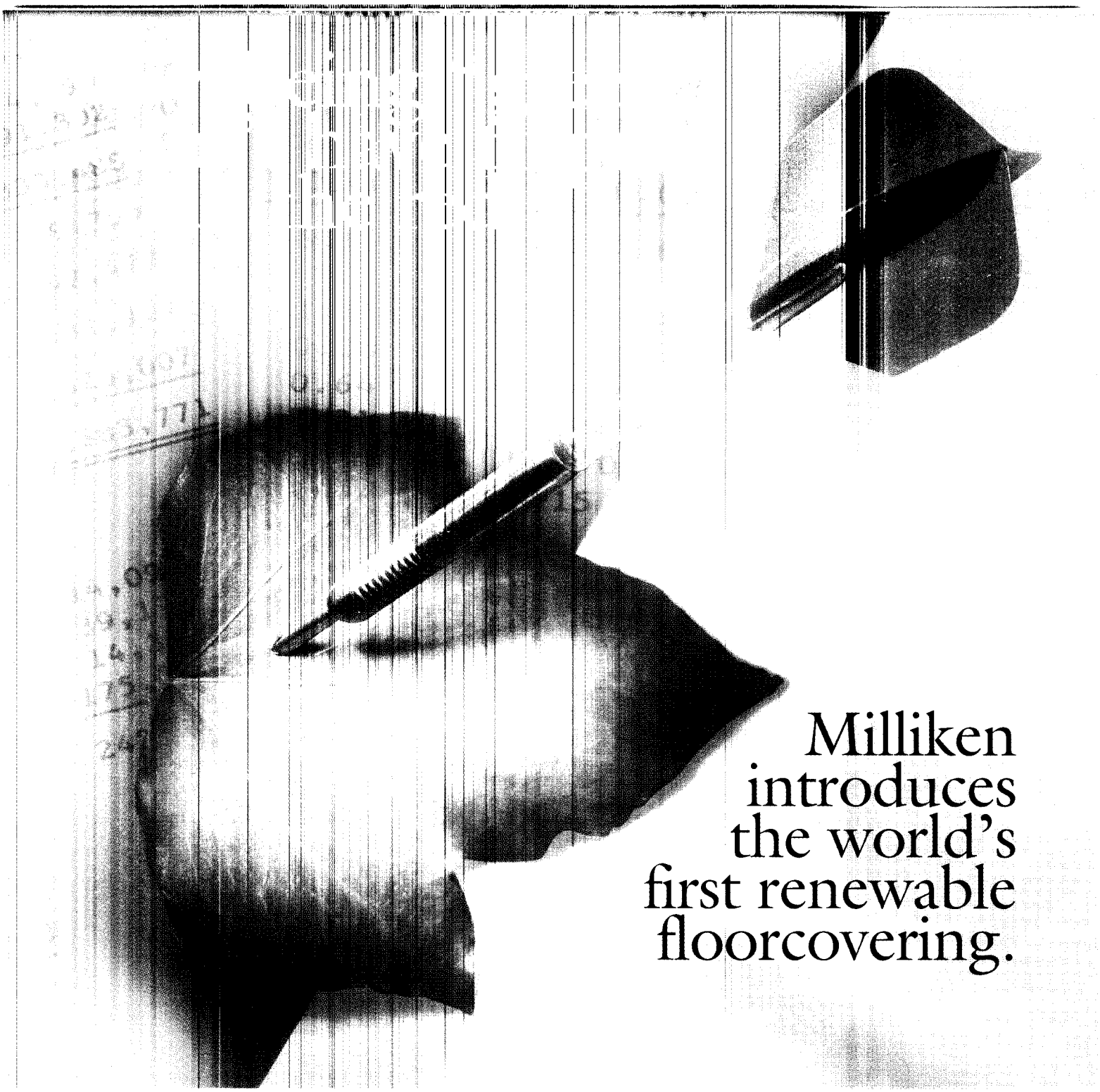

Milliken introduces the world's first renewable floorcovering.

Changing carpet in the business world can get expensive. Not just the cost of buying new carpet, but the skyrocketing cost of landfilling the old stuff.

What if you could renew what's already on the floor? And put an end to the waste cycle?

Milliken modular makes it possible.

It allows the carpet you install today to be restyled years from now with tomorrow's cutting-edge designs.

With Milliken's new Earthwise Ennovations™ process, your old Milliken modular carpet is cleaned, rejuvenated, restyled — and reinstalled as fresh, like-new carpet.

You conserve natural resources and reduce solid waste in landfills. You reduce landfill charges, too. And save big money by reconditioning your carpet at about half the cost of new.

Finally, being earthwise is financially smart, too.

earthwise e2 ennovations

Milliken Carpet

For a free video about Milliken's exclusive Earthwise Ennovations™ program, call 1-800-241-4826, ext. 5108.

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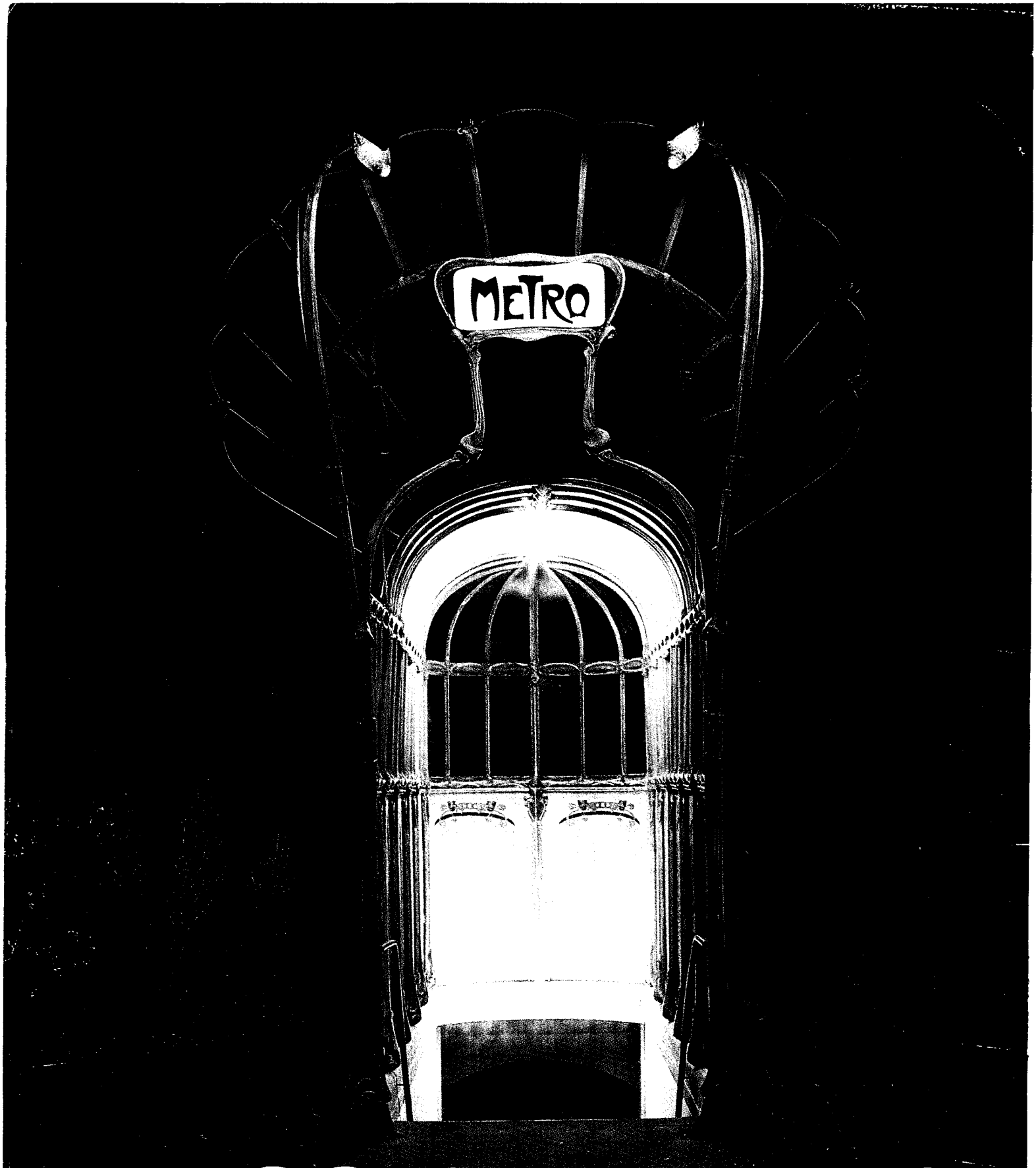

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